federal register

Wednesday
December 10, 1980

Part II

Department of Defense

Office of the Secretary

Defense Acquisition Regulation

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 1-39

[DAC 76-24]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-24. The changes include implementation of the Contract Disputes Act of 1978 and OFPP Policy Letter 80-3, use of women-owned business concerns and clarifications and amendments to coverage on small business concerns.

EFFECTIVE DATE: August 28, 1980.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3D1080, Pentagon, Washington, D.C. 20301, Telephone 202-697-6710.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations. The July 1, 1979, revision is the most recent edition of that title. It reflects amendments to the 1976 edition made by Circulars 76-1 through 76-19.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158). At that time, the Department also announced that any amendments made to the Regulation after Circular 76-19 would be published in the **Federal Register.**

Defense Acquisition Circular 76-24

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-24, issued August 29, 1980. The following is a summary of the amendments:

Contract Disputes Act. The Contract Disputes Act coverage (1) defines a "claim;" (ii) provides guidance for the payment of interest on contractors' claims; (iii) differentiates between claims arising under a contract and claims related to a contract; and (iv) provides criteria for unusual circumstances requiring continued performance under the contract pending final resolution of a claim or similar actions.

Women-Owned Business Concerns. Paragraph 1-708 and the clause in 7-104.52 are added to the DAR as the total DoD implementation of OFPP Policy Letter 10-4 and Executive Order 12138, concerning the use of women-owned business concerns. The clause in 7-104.52, encouraging the use of women-owned businesses in the award of subcontracts, is to be included in all contracts exceeding $10,000 with two limited exceptions as indicated in 1-708.

Small Business Concerns. The Pub. L. 95-507 coverage revises the material published in DAC 76-19 as a result of comments concerning that DAC received from industry and Government agencies. A detailed description of the numerous changes is included in DAC 76-24. Among the more substantive changes are (i) use of the term "small business—small purchase set-aside" for "reservation;" (ii) allowance for small businesses to supply domestic large business products for small business—small purchase set-asides; and (iii) clarification of the requirements of the small business subcontracting clause.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76-24. The number at the top of each page (for example, 3:139) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the July 1, 1979, edition of the Defense Acquisition Regulation contained in 32 CFR Parts 1-39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

DAR paragraph	Replacement pages
Volume I	
1-314	1:32, 1:32-A thru 1:32-E, 1:33
1:333	1:75
1:335	1:75
1:406	1:82 and 1:82-A
1:701.1	1:107, 1:108, 1:108-A
1-702	1:116
1-704.1	1:120
1-704.3	1:122 and 1:122-B
1-704.4	1:122-E
1-705.4	1:124 thru 1:128
1-705.5	1:129, 1:130, 1:133, 1:137
1-705.6	1:139
1-706	1:140
1-706.1	1:140
1-706.3	1:142-B, 1:142-C
1-706.5	1:142-D
1-707.1	1:146, 1:146-A
1-707.2	1:146-A,-B, 1:147, 1:148
1-707.3	1:148, 1:148-A
1-708	1:149
1-1002.1	1:166
2-201	2:16
2-406.4	2:33 thru 2:36
3-501	3:64, 3:64-A, 3:68-A
3-510	3:76
3-603.1	3:78, 3:79, 3:79-A
3-1204.1	3:181
Volume II	
7-103.12	7:13 thru 7:151
7-104.14	7:52-A thru 7:54-C
7-104.52	7:110, 7:110-A
7-104.82	7:125, 7:126
7-203.9	7:182
7-204.37	7:204
7:302.8	7:208
7:303.51	7:238
7:402.9	7:253-A
7-402.33	7:259
7-602.26	7:286, 7:287
7-602.48	7:297
7-605.36	7:327
7-605.44	7:328
7-608.21	7:342
7-608.22	7:342
7-702.34	7:360
7-702.52	7:361
7-703.26	7:362
7-703.46	7:364
7-704.40	7:366
7-705.33	7:369
7-802.5	7:374
7-901.28	7:388
7-902.1	7:388
7-1902.19	7:446
7-1903.11	7:446
7-2003.32	7:512, 7:512-A
7-2003.74	7:526

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 3, 1980

BILLING CODE 3810-70-M

DEFENSE ACQUISITION CIRCULAR

28 AUGUST 1980 NUMBER 76-24

This Defense Acquisition Circular is issued by direction of the Secretary of Defense pursuant to the authority contained in 5 U.S. Code 301, 10 U.S. Code 2202, DoD Directive 5000.35, and DAR (ASPR) 1-106.

Unless otherwise specified, all DAR and other directive material contained in this Defense Acquisition Circular is effective upon receipt in accordance with DAR 1-106.2(d).

Reproduction authorized.

SPECIAL NOTE: All replacement pages furnished with Defense Acquisition Circulars (whether or not identified by specific items) are replacement pages for the 1976 edition of DAR (ASPR).

ITEM	TITLE	PAGE
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III	Women-Owned Business Concerns	6

ITEM I CONTRACT DISPUTES ACT

The attached DAR changes are the permanent DAR implementation of the Contract Disputes Act of 1978 (Public Law 95-563; 41 U.S.C. 601-613) and OFPP Policy Letter 80-3. Previous DAR implementation of the Act was provided by uniform regulations and guidance approved by the DAR Council and issued by each Department. The attached changes supersede all such previously issued departmental regulations and guidance. Notwithstanding the provisions of any "Disputes" clause in a contract awarded prior to 1 March 1979, the contractor may elect to proceed under the Act and these implementing procedures with respect to any claim pending before the contracting officer on 1 March 1979 or any claim initiated thereafter.

REPLACEMENT PAGES: 1:32, 1:32-A thru 1:32-E, 1:33, 1:75, 2:33, 2:36, 3:76, 7:13 thru 7:15, 7:125, 7:126.
(Note: Pages 2:34 and 2:35 have been removed.)

ITEM II SMALL BUSINESS CONCERNS

1. When DAC 76-19 was issued on July 27, 1979, it was noted that the regulation implementing Public Law 95-507 was promulgated without consideration of comments from industry or other governmental agencies. Since that time, comments from the Departments, Small Business Administration, Office of Federal Procurement Policy, and industry have been requested and considered.

2. The term "reservation" was used in DAC 76-19 to denote acquisitions reserved for small business by virtue of the acquisition being under $10,000 and subject to small purchase procedures. The term "small business-small purchase set-aside" has been adopted Government-wide and has been substituted in every place the term "reservation" was used in DAC 76-19 or used in new coverage where "reservation" would otherwise have been appropriate. The term "set-aside" or the phrase "set aside" when not used as part of the term "small business-small purchase set-aside" still denotes actions taken pursuant to 1-706.

3. The following list of changes, although not all-inclusive, addresses in summary form the more important clarifications, amendments, and modifications.

a. 1-406 - Amended to authorize ACOs to assist the PCO in evaluating the prime contractor's company and division-wide subcontracting plans.
b. 1-701.1(c) - Amended to allow small business nonmanufacturers to supply domestic large business products if the contract is a small business-small purchase set-aside under 1-702(c).

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c. 1-702(c) - Modified to clarify the intent that, when the contract is to be for less than $10,000 and subject to small purchase procedures, the contract is a small business-small purchase set-aside (1-702(c)) without further contracting officer action.
d. 1-704.3(b)(iii) - Modified to clarify the SADBU's role and appeal rights regarding small business-small purchase set-asides (1-702(c)) and set-asides (1-706); i.e., appeals are limited to set-aside actions pursuant to 1-706.
e. 1-705.4(c) - Amended to change those circumstances under which a finding of small business nonresponsibility shall not be referred to SBA by substituting "made pursuant to small purchase procedures" for the previous requirement regarding purchases under $10,000.
f. 1-705.5(a) - Amended to establish time limits within which SBA must take disagreements to the Secretary of the appropriate Department.
g. 1-706.1(c) - Modified the requirements for reviewing acquisitions for small business set-aside so that purchases which are between $2,500 and $10,000 and subject to small purchase procedures will not be reviewed for set-asides because either they will already be small business-small purchase set-asides (1-702(c)) or, if the small business-small purchase set-aside (1-702(c)) has been dissolved, there will be no basis for a set-aside.
h. 1-707.1 - Subparagraph (a) adds a definition of subcontract. Subparagraph (b) explains the circumstances under which contract modifications must have subcontracting plans. Subparagraph (c) explains how options are to be treated with respect to subcontracting plans. Subparagraph (d) describes circumstances under which a preliminary subcontracting plan would be appropriate. Subparagraph (e) recognizes the circumstances under which negotiating subcontracting plans with all firms in the competitive range is permitted.
i. 1-707.2(b)(1)(v)—(vii) - Amended to add PCO duties regarding cooperation and coordination with SBA's PCR on subcontracting plans.
j. 1-707.2(b)(2) - Amended to clarify the obligations of the PCO when reviewing subcontracting plans for negotiated and formally advertised contracts and to describe those circumstances under which a contractor may be ineligible for award based in whole or in part on the contents of the subcontracting plans.
k. 1-707.2(c)(4) - Modified by substituting the word "adopt" for "submit and carry out" in order to conform with the contractor's obligation under 7-104.14(b) and (c).

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l. 1-707.3(d) - Added new subparagraph setting forth the criteria the contracting officer should use in determining whether subcontracting possibilities exist.

m. 3-603.1(g) - Changed to allow small business-small purchase set-asides (1-702(c)) where the contracting officer determines for purchases under $500 that there is one small business. Also changed so as not to require an automatic dissolution of an otherwise valid small business-small purchase set-aside (1-702(c)) in the event that only one quotation is received for a contract in excess of $500.

n. 3-603.1(g) - Amended to reflect the requirement that where no competitive quotes are received from small businesses, contracting officers cannot make an offer on the basis of any quotes received from other than small businesses unless additional quotations are solicited on an unrestricted basis.

o. 7-104.14(a) - Amended to add a definition of subcontract in paragraph (b) of the clause.

p. 7-104.14(b) - Clause subparagraph (b)(4) amended to clarify the extent to which the contractor must flow down the clauses at 7-104.14(a) and 7-104(b) or (c) to subcontractors.

q. 7-104.14(b) - Clause subparagraphs (b)(6)*a.—f.* amended to state the minimum extent and content of records the offeror will maintain to demonstrate the procedures to comply with its subcontracting plan.

r. 7-104.14(b) - Clause paragraph (f) amended to permit the contracting officer, upon request of the offeror, to approve a company or division-wide subcontracting plan which will cover the company's commercial production generally for its Government and regular commercial sales.

s. 7-104.14(c) - Clause paragraph (b) amended same as p. above.

t. 7-104.14(c) - Clause subparagraph (b)(4) amended same as q. above.

u. 7-104.14(c) - Clause paragraph (f) amended same as r. above.

v. 7-802.5(a) - Amended to add small business and small disadvantaged business subcontracting plan to definitization of letter contracts.

w. 7-2003.32 - Clause added to provide notice of small business-small purchase set-aside (1-702(c)).

REPLACEMENT PAGES: 1:82, 1:82-A, 1:107, 1:108, 1:108-A, 1:116, 1:120, 1:122, 1:122-B, 1:122-E, 1:124 thru 1:130, 1:133, 1:137, 1:139, 1:140, 1:142-B thru 1:142-D, 1:146, 1:146-A, 1:146-B, 1:147, 1:148, 1:148-A, 1:149, 1:166, 2:16, 3:64, 3:64-A, 3:68-A, 3:78, 3:79, 3:79-A, 3:181, 7:52-A thru 7:52-D, 7:53, 7:53-A, 7:53-B, 7:54, 7:54-A thru 7:54-C, 7:182, 7:204, 7:208, 7:238, 7:253-A, 7:259, 7:286, 7:287, 7:297, 7:327, 7:328, 7:342, 7:360, 7:361, 7:362, 7:364, 7:366, 7:369, 7:374, 7:388, 7:446, 7:512, 7:512-A, 7:526.

ITEM III WOMEN-OWNED BUSINESS CONCERNS

Paragraph 1-708 and the clause in 7-104.52 are added to the DAR as the total DoD implementation of OFPP Policy Letter 10-4 and Executive Order 12138, concerning the use of women-owned business concerns. The clause in 7-104.52, encouraging the use of women-owned businesses in the award of subcontracts, is to be included in all contracts exceeding $10,000 with two limited exceptions as indicated in 1-708.
REPLACEMENT PAGES: 1:149, 7:110, 7:110-A.

question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested, unless the overcharged or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Secretary concerned.

(c) *Disposition of Voluntary Refunds.*

(i) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(ii) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the office designated for contract administration and shall be forwarded immediately to the comptroller of the appropriate Department, or other Departmental officer responsible for the control of funds. When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

1-313 Procurement of Parts.

(a) Any part, subassembly or component (hereinafter called "part") for military equipment, to be used for replenishment of stock, repair, or replacement, must be procured so as to assure the requisite safe, dependable, and effective operation of the equipment. (Items procured as spare parts are governed by the "DoD High Dollar Spare Parts Breakout Program" described in DoD Joint Regulation AR 715-22, NAVMATINST P4200.33, AFR 57-6, MCO P4200.13, DSAM 4105.2.) Where it is feasible to do so without impairing this assurance, parts should be procured on a competitive basis, as in the kind of cases described in (b) below. However, where this assurance can be had only if the parts are procured from the original manufacturer of the equipment or his supplier, the procurement should be restricted accordingly, as in the kind of cases described in (c) below.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for procurement purposes (or can be made so available in keeping with the policies in Section IX, Part 2) are to be procured on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate procurement, such as resistors, transformers, generators, spark plugs, electron tubes, or other parts having commercial equivalents.

(c) Parts not within the scope of (b) above generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in Section IX Part

2) to assure the requisite reliability and interchangeability of the parts, and acquisition on a competitive basis would be consistent with the assurance described in (a) above. In assessing this assurance, the nature and function of the equipment for which the part is needed should be considered. Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and interchangeability characteristics required for specific critical applications. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive contracting for the former but not for the latter. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

(d) When an award is made to a source that has not previously produced the item, the cognizant Government inspection activity and the appropriate contract administration office should be notified by the contracting office that the contractor will be producing the item for the first time.

1-314 Disputes and Appeals.

(a) *General.* The Contract Disputes Act of 1978 (Public Law 95-563, 41 U.S.C. 601-613) establishes procedures and requirements for asserting and resolving claims by or against contractors relating to a contract subject to the Act. In addition, the Act provides for the payment of interest on contractor claims, for the certification of contract claims in excess of $50,000, and a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

(b) *Definition.*

(1) As used herein, "claim" means a written demand on one of the contracting parties seeking, as a matter of right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or related to the contract. However, a written demand by the contractor seeking the payment of money in excess of $50,000 is not a claim unless or until certified as required by (L) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim under Section 6(a) of the Act as provided in (h) below.

(c) *Government Policy on Settlement by Mutual Agreement.* It is the Government's policy, consistent with the Act, to try to resolve all contractual issues by mutual agreement at the contracting officer's level, without litigation. Implementation of this policy depends on an open mind with regard to such issues and the adequacy of the supporting information provided by both the contractor and the Government. In appropriate circumstances, before issuance of a contracting officer's decision on a claim, informal discussions between the parties, to the extent feasible, by individuals who have not participated substantially in the matter in dispute, can aid in the resolution of differences by mutual agreement and should be considered.

(d) *Contracting Officer Authority.* Except as provided in this paragraph (d), the contracting officer is authorized (within any specific limitations in his warrant) to decide or settle all claims relating to a contract subject to the Act. The authority of this paragraph (d) does not extend to (i) a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine; or (ii) any claim involving fraud. See (g) below.

(e) *Contracts Excepted From the Act.* A contract with a foreign government or agency thereof, or with an international organization or subsidiary body thereof, may be exempted from the Act and from DAR 1-314 if the Secretary determines that application of the Contract Disputes Act to the contract would not be in the public interest.

(f) *Mistakes Under the Contract Disputes Act.*

(1) Requests for relief under Public Law 85-804 are not considered to be claims within the Contract Disputes Act of 1978 or the Disputes clause, and shall continue to be processed under DAR Section XVII. However, certain kinds of relief formerly available only under Public Law 85-804, i.e., legal entitlement to rescission or reformation for mutual mistake, are now available within the authority of the contracting officer under the Act and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(2) A contractor's allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.). A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts.

Due to the complex legal issues likely to be associated with such allegations of legal entitlement, contracting officers shall make written decisions, which shall be prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(3) A claim that is either denied or not approved in its entirety under (2) above may be cognizable as a request for relief under Public Law 85-804 and DAR Section XVII. However, such a claim must first be submitted to the contracting officer for consideration under (2) above since such a claim is not cognizable under Public Law 85-804 and DAR Section XVII unless other legal authority in the Department concerned is determined to be lacking or inadequate.

(g) *Referral of Suspected Fraudulent Claims.* If a contractor is unable to support any part of its claim and there is evidence that such inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the designated Department or official responsible for investigating fraud, as listed in 1-600(b).

(h) *Initiation of a Claim.* Contractor claims shall be made in writing and submitted to the contracting officer for a decision. Claims by the Government against a contractor shall be the subject of a contracting officer decision.

(i) *Contracting Officer's Decision.*

(1) When a claim by or against a contractor cannot be satisfied or settled by agreement and a decision on the claim is necessary, the contracting officer shall:

(i) review the facts pertinent to the claim;

(ii) secure assistance from legal and other advisors; and

(iii) coordinate with the contract administration office or contracting office, when appropriate.

(2) The contracting officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and shall include in the decision:

(i) a paragraph substantially as follows:

> This is the final decision of the Contracting Officer. This decision may be appealed to the Board of Contract Appeals.
>
> If you decide to make such an appeal, you must mail or otherwise furnish written notice thereof to the Board of Contract Appeals within 90 days from the date you receive this decision.

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A copy thereof shall be furnished to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, shall reference this decision, and identify the contract by number. For appeals under the Disputes clause you may, solely at your election, proceed under the Board of Contract Appeals small claims procedure for claims $10,000 or less or their accelerated procedure for claims $50,000 or less. In lieu of appealing to the cognizant Board of Contract Appeals, you may bring an action directly in the U.S. Court of Claims* within 12 months of the date you receive this decision.

*Except as provided in Section 4 of the Act (Maritime Contracts)

(ii) a description of the claim or dispute;

(iii) a reference to pertinent contract provisions;

(iv) a statement of the factual areas of agreement or disagreement; and

(v) a statement of the contracting officer's decision, with supporting rationale.

(3) The contracting officer shall issue the decision within the following statutory time limitation:

(i) for claims not exceeding $50,000: If requested by the contractor, 60 days after receipt of the written request. If no contractor request is received by the contracting officer, the decision shall be rendered in a reasonable time.

(ii) for claims exceeding $50,000: Sixty days after receipt of a certified claim; *Provided, however,* That if a decision is not issued within 60 days the contracting officer shall notify the contractor of the time within which he will make the decision.

(iii) the reasonableness of these time periods will depend on the size and complexity of the claims and the adequacy of the contractor's supporting data and any other relevant factors.

(4) The amount determined payable pursuant to the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

(j) *Payment of Interest on Contractor's Claim.* The Government shall pay interest on a contractor's claim on the amount found due and unpaid from the date the contracting officer receives the claim (properly certified, if required, in accordance with (L) below), or from the date payment otherwise would be due, if such date is later, until the date payment is made, at the rate or rates fixed by the Secretary of the Treasury pursuant to the Renegotiation Act, Public Law 92-41.

(k) *Disputes Clause.*

(1) The Act applies to all disputes with respect to contracting officer decisions on matters "arising under" or "relating to" a contract. Agency Boards of Contract Appeals (BCA) created under the Act have the same powers of relief as the Court of Claims with respect to a claim that is subject to the Act. Thus, the statutory agency BCAs continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The Disputes clause set forth in 7-103.12 recognizes the all disputes authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. It is not intended to affect the rights and obligations of the parties as provided by the Act nor to constrain the authority of the statutory agency BCAs in the handling and deciding of contractor appeals pursuant to the Act.

(2) In general, prior to passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, Section 6(b) of the Act authorizes contracting agencies to include a provision requiring a contractor to continue performance of a contract in accordance with the contracting officer's decision pending final decision on a claim relating to the contract. In unusual circumstances the performance of some contracts may be so vital to the national security or to the public health and welfare that performance must be guaranteed even in the event of a dispute that may be characterized as a claim relating to, as opposed to arising under, the contract. In recognition of this fact, an alternative provision is provided for paragraph (h) of the Disputes clause at 7-103.12(b).

(3) The acquisitions of aircraft, naval vessels, missiles, tracked combat vehicles, and related electronic systems shall include the alternate provision at 7-103.12(b). In addition, the alternate provision at 7-103.12(b) may also be used in those contracts or classes of contracts where it has been determined, in accordance with Department procedures, that it is essential because of the unusual circumstances

described in (k)(2) above. The determination to use the alternate provision at 7-103.12(b) in other situations shall be made by the head of the contracting activity responsible for the acquisition involved. Examples of the types of unusual circumstance where continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons, support systems, and related components other than those listed above, or other essential supplies or services whose timely reprocurement from other sources would be impracticable. In all contracts employing the alternate provision at 7-103.12(b), in the event of a dispute not arising under but relating to the contract, agencies should consider providing, through appropriate departmental procedures, financing of the continued performance, *Provided*, That the Government's interests are properly secured.

(L) *Certification of Contractor Claims Over $50,000.*

(1) Section 6(c)(1) of the Act requires that a contractor claim over $50,000 shall be certified at the time of submission that it is made in good faith; that the supporting data are accurate and complete to the best of the contractor's knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

(2) The certification shall be executed by the contractor if an individual. When the contractor is not an individual, the certification shall be executed by a senior company official in charge at the contractor's plant or location involved, or by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(3) In determining when the dollar thresholds requiring claim certification are met, the aggregate amount of both the increased and decreased costs shall be used. (See examples at 3-807.3(b)(ii).)

1-315 Capital Investment by Contractors. It is DoD policy to encourage contractor capital investment for efficient capability in the research, development and/or production of weapon systems and material. Techniques to support this policy and incentivize contractor capital investment include the DoD profit policy (3-808.2), multi-year procurement (1-332), award fee contracts (3-405.5), and special capital investment incentive provisions (3-815).

1-316 Disclosure of Contractor Performance Data to Other Government Agencies and Foreign Governments. Subject to any applicable security requirements, the Departments shall honor the requests of other Government agencies for readily available information relating to the performance of their prime contractors. The agency requesting the information shall be advised that it will be responsible for any further release of such information. A request from a foreign government for such information should similarly be honored. However, if there is any question as to propriety of divulging the information for any reason, including the security aspect, the reply should be forwarded through appropriate Departmental channels.

1-317 Rental in Lieu of Purchase. There are situations in which the Government's equipment requirements may be more economically filled by rental than by purchase. This is particularly true in the case of certain expensive commercial equipments. The decision to rent rather than purchase must be made on a case-by-case basis, and rental should be used where it is in the Government's interest. The criteria to be considered in each case include the following:

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(i) the Government requirement is of short duration, and purchase would be costlier than rental (generally, long-term rentals should be avoided in the absence of compelling circumstances);

(ii) the probability that the equipment will become obsolete and that replacement within a short period will be necessary;

(iii) the equipment is special or technical, and the lessor will provide the equipment, as well as maintenance and repair services, at a lower cost than would otherwise be available to the Government.

1-318 Contracts Conditioned Upon the Availability of Funds.

(a) *Fiscal Year Contracts.* To effect procurements promptly upon the beginning of a new fiscal year, it may at times be necessary to initiate a procurement properly chargeable to funds of the new fiscal year prior to the availability of such funds. In such instances, the clause in 7-104.91(a) shall be included in the contract. This authority shall be used only for operation and maintenance and continuing services (such as rentals, utilities, and items of supply which are not financed by stock funds) which are necessary for normal operation and for which the Congress consistently appropriates funds.

(b) *Contracts Crossing Fiscal Years.* A one-year requirements or indefinite quantity contract for services funded by annual appropriations may extend beyond the end of the fiscal year current at the beginning of the contract term provided that any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (see 22-107). In this case, the clause in 7-104.91(b) shall be included in the contract. Also, a contract for expert or consultant services entered into in accordance with 22-204.2 and calling for an end product which cannot feasibly be subdivided for separate performance in each fiscal year may cross fiscal years.

(c) *Acceptance of Supplies or Services.* When either of the Availability of Funds clauses is used, the supplies or services shall not be accepted by the Government until funds are available to the contracting officer for the procurement and until the contracting officer has given notice to the contractor (to be confirmed in writing) of such availability. Records will be maintained to insure adequate administrative control of funds.

1-319 Renegotiation Performance Reports.

(a) *Renegotiation Board.* Pursuant to the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1211-1233), the Renegotiation Board reviews profits of defense contractors performing renegotiable contracts and subcontracts aggregating more than $1 million in a fiscal year in order to eliminate any excessive profits therefrom. Such review involves consideration of financial statements and other information furnished by both contractors and the Departments.

(b) *Maintenance of Renegotiation Information in Contract Files.* The contracting officer shall include in the file of each contract information pertaining to the extent and effectiveness of competition obtained in the negotiation and award of the contract, the reasonableness of the prices and profits negotiated, any target and incentive formulae incorporated in the contract, the extent of risk assumed by the contractor, the contractor's efficiency in performance of the contract, and any other information which would facilitate compilation of the performance reports described in (d) below. This is particularly important in the case of incentive type contracts where the question may be raised as to whether additional profits paid to the contractor by operation of the incentive provisions have been earned. To insure the collection of accurate and detailed information, the afore-

1-333. Reserved.

1-334 Major Defense Systems Acquisition. Contract type shall be consistent with all program characteristics including risk to the contractor and Government. Normally, the precise production cost of a new complex Defense system cannot be determined prior to development and this creates a situation of risk such that:

(i) the total package procurement concept will not be used;

(ii) firm or ceiling priced production options shall not be used in development contracts. However, when development of major systems has proceeded to a point that technical and performance uncertainties have been minimized and realistic estimates of their cost identified, firm or ceiling priced production options for limited quantities may be included in the development contract. Such options may be appropriate, for instance, when prototyping or other forms of technical and cost verification of concepts has occurred;

(iii) cost type prime and subcontracts are preferred where substantial development effort is involved;

(iv) when risk is reduced to the extent that realistic pricing can occur, fixed-price type contracts should be issued;

(v) letter contracts shall be minimized; and

(vi) changes shall be limited to those that are necessary or offer significant benefit to the DoD. When change orders are necessary, they shall be contractually priced or subject to an established ceiling before authorization, except where this is impractical.

1-335 Life Cycle Costing. The Life Cycle Cost of a system or item of equipment is the total cost to the Government of acquisition and ownership of that system or item of equipment over its full life. It includes the cost of development, acquisition, operation, support, and where applicable, disposal. Since the cost of operating and supporting the system or equipment over its useful life is substantial and, in many cases, greater than the acquisition cost, it is essential that such costs be considered in development and acquisition decisions in order that proper consideration can be given to those systems or equipments that will result in the lowest life cycle cost to the Government. Guidelines, including representative detailed procedures for implementing life cycle costing are contained in the following documents published by the Under Secretary of Defense for Research and Engineering:

(i) LCC-1, DoD Life Cycle Costing Procurement Guide (Interim);

(ii) LCC-2, DoD Life Cycle Costing Casebook;

(iii) LCC-3, Life Cycle Costing Guide for System Acquisitions (Interim).

1-336 Preference for United States Flag Air Carriers.

1-336.1 *Policy.*

(a) Public Law 93-623 requires that all Federal agencies, Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available.

(b) The clause in 7–104.95 shall be included in (i) invitations for bids, (ii) requests for proposals, and (iii) contracts (including contracts resulting from unsolicited proposals) whenever it is possible that international air transportation of personnel (and their personal effects) or property will be required in the performance of the contract. The requirements of this paragraph do not apply to small purchases made in accordance with Section III, Part 6.

1–336.2 *Availability or Unavailability of Certificated Air Carrier.*

(a) Expenditures for service furnished by a non-certificated air carrier generally will be allowed only when services by a certificated air carrier or carriers is "unavailable" as indicated by June 17, 1975, Comptroller General's memorandum (B–138942) entitled "*Guidelines for Implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974.*"

(b) Passenger or freight service by a certificated air carrier is considered "available" even though:

(i) comparable or a different kind of service by a non-certificated air carrier costs less, or

(ii) service by a non-certificated air carrier can be paid for in excess foreign currency, or

(iii) service by a non-certificated air carrier is preferred by the agency or traveler needing air transportation, or

(iv) service by a non-certificated air carrier is more convenient for the agency or traveler needing air transportation.

(c) Passenger service by a certificated air carrier will be considered to be "unavailable:"

(i) when the traveler while en route has to wait six hours or more to transfer to a certificated air carrier to proceed to the intended destination, or

(ii) when any flight by a certificated air carrier is interrupted by a stop anticipated to be six hours or more for refueling, reloading, repairs, etc., and no other flight by a certificated air carrier is available during the six hour period, or

(iii) when by itself or in combination with other certificated or non-certificated air carriers (if certificated air carriers are "unavailable") it takes twelve or more hours longer from the origin airport to the destination airport to accomplish the agency's mission than would service by a non-certificated air carrier or carriers.

1–336.3 *Disallowance of Expenditures.* The Act and the Comptroller General's memorandum provide that he will disallow any expenditures for commercial foreign air transportation or non-certificated air carriers unless there is included in the appropriate voucher a justification explaining why service by certificated air carriers was "unavailable." The justification requirement is satisfied by the contractor's use of the certification contained in the contract clause which is prescribed by 1–336.1(b).

1–336.4 *Air Freight Forwarders.*

(a) International air freight forwarders, as defined in 14 CFR 297.1(c) and 297.2 (1974) that are engaged in international air transportation (49 U.S.C. 1301(21)(c)(1970)) may be used for Government-financed movements of pro-

(xiv) monitor contractor's financial condition and advise the procuring contracting officer when contract performance is jeopardized thereby;

(xv) when authorized by the purchasing office, negotiate prices and execute priced exhibits for unpriced orders issued by the procuring contracting officer under basic ordering agreements;

(xvi) issue tax exemption certificates;

(xvii) conduct post-award orientation conferences;

(xviii) issue work requests under maintenance, overhaul and modification contracts;

(xix) negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Section VIII;

(xx) perform necessary screening, redistribution and disposal of contractor inventory;

(xxi) perform property administration;

(xxii) prepare findings of fact and issue decisions under the Disputes clause on matters on which the contract administration office has the authority to take definitive action;

(xxiii) assure processing and execution of duty-free entry certificates;

(xxiv) in facilities contracts—

(A) evaluate contractor's requests for facilities and changes to existing facilities, and provide the procuring contracting officer with appropriate recommendations thereon;

(B) assure required screening of facility items before acquisition by contractor;

(C) approve use of facilities on a noninterference basis in accordance with paragraph (b) of the clause in 7–702.12;

(D) assure payment of any rental due; and

(E) assure reporting of items no longer needed for defense production;

(xxv) perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract schedules;

(xxvi) perform pre-award surveys;

(xxvii) perform industrial readiness and mobilization production planning field surveys and schedule negotiations;

(xxviii) monitor contractor industrial labor relations matters under the contract; apprise the procuring contracting officer and cognizant departmental labor relations advisor of actual or potential labor disputes; and coordinate the removal of urgently required material from the strikebound contractor's plants upon instructions from, and authorizations of, the procuring contracting officer and the cognizant departmental labor relations advisor;

(xxix) perform traffic management services including issuance and control of Government bills of lading and other transportation documentation;

(xxx) review the adequacy of the contractor's traffic operations;

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(xxxi) review and evaluate preservation, packaging, and packing;

(xxxii) perform engineering surveillance to assess compliance with contractual terms for schedule, cost and technical performance in the areas of design, development and production;

(xxxiii) evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems in respect to: design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, configuration management and independent research and development;

(xxxiv) review and evaluate for technical adequacy the logistics support, maintenance, and modification programs accomplished by the contractor;

(xxxv) review and analyze contractor proposed engineering and design studies and make comments and recommendations to the contracting activity, as required;

(xxxvi) review Class I Engineering Change Proposals for need, technical adequacy of design, producibility, impact on quality, reliability, schedule and cost, and submit comments to contracting activity;

(xxxvii) review Class II Engineering Change Proposals for proper classification;

(xxxviii) assist in evaluation and make recommendations for acceptance or rejection of waivers and/or deviations;

(xxxix) monitor contractor Value Engineering Program;

(xl) perform engineering analyses of contractor cost proposals;

(xli) report inadequacies noted in specifications to contracting office;

(xlii) *Reserved;*

(xliii) *Reserved;*

(xliv) obtain previously approved plan or, if none exists, assist the PCO in evaluating the contractor's company or division-wide small and disadvantaged business subcontracting plans for its commercial products;

(xlv) assist and advise the PCO, upon request, on the evaluation of proposed small business and small disadvantaged business subcontracting plans, including documentation of compliance and performance with subcontracting plans under previous contracts;

(xlvi) insure contractor's compliance with small business and small disadvantaged business plans, and labor area concern contractual provisions; conduct periodic surveillance of compliance with small business and small disadvantaged business plans and labor surplus area provisions; maintain documentation of contractor's performance and compliance with such plans and provisions; and provide advice, counsel, and assistance to such firms;

(xlvii) perform quality assurance;

(xlviii) maintain surveillance of flight operations;

(xlix) assure contractor compliance with applicable safety requirements;

(l) Reserved;

(li) in connection with classified contracts, administer those portions of the Industrial Security Program designated as ACO responsibilities in

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c. Nonmanufacturing Industries. For a product not manufactured by the concern submitting a bid or proposal, other than for a construction or service contract, the number of employees of that concern must not exceed 500 persons and, in the case of an acquisition set aside for small business (see 1-706), the concern must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands by small business concerns. A small nonmanufacturer responding to small business-small purchase set-asides (1-702(c)) may furnish any domestically produced or manufactured product. A small nonmanufacturer responding in its own name to an unrestricted acquisition or a small business-small purchase set-aside (1-702(c)) and offering the product of a domestic large business shall be eligible for COC consideration. If the product of a large business is supplied, that product and the responsibility of the manufacturer must be acceptable to the contracting office. The SBA certifies the responsibility of the small business dealer, not the responsibility of the manufacturer. However, in the event of equal low bids (2-407.6) preference shall be given to the company offering the product of a small business. On small business set-asides, if the goods to be furnished are wool, worsted, knitwear, duck, or webbing, nonmanufacturers (dealers and converters) shall furnish products that have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher. On small business set-asides, if the product to be furnished is thread, nonmanufacturers (dealers and converters) shall furnish thread that has been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specification, but excluding mercerizing, spinning, throwing, or twisting operations.")

d. Service Industries

1. Any concern bidding on a contract for services not elsewhere defined in this Section is classified as small if the average annual receipts of the concern and its affiliates for the preceding three fiscal years do not exceed $2 million.

2. Any concern bidding on a contract for engineering services (other than marine engineering services), is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7.5 million.

3. Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $8 million.

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4. Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $9 million.

5. Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4.5 million.

6. Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7.5 million. Base maintenance is defined as follows:

> "*Base Maintenance*" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands or the District of Columbia three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, refuse collection services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air conditioning and refrigeration maintenance, *provided*, however, that whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50% of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such services is classified.

7. Any concern bidding on contracts for marine cargo handling services is classified as small if its annual receipts do not exceed $7.5 million for the preceding three fiscal years.

8. Any concern bidding on a contract for food services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $5.5 million.

9. (i) Any concern bidding on a contract for laundry including linen supply, diaper services, and industrial laundering, is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million.

(ii) Any concern bidding on a contract for cleaning and dyeing, including rug cleaning services, is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $1.5 million.

10. Any concern bidding on a contract for computer programming services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million.

11. Any concern bidding on a contract for flight training services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7 million.

12. Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7 million.

13. Any concern bidding on a contract for tire recapping services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million. This section applies only to acquisitions requiring the services of tire retreading and repair shops (Standard Industrial Classification Industry No. 7534, Tire Retreading and Repair Shops) and not to acquisitions for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, are considered for size standard purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

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14. Any concern bidding on a contract for data processing services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million.

15. Any concern bidding on a contract for computer maintenance services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7 million.

16. Any concern bidding on a contract for services requiring the use of one or more helicopters or fixed-wing aircraft is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $3.5 million.

17. Any concern bidding on a contract for refuse collection services, with or without disposal, is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $3.5 million.

18. Any concern bidding on a contract for protective services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4.5 million.

e. Transportation Industries.

1. General — Except as provided in *2* and *3* below, for passenger or freight transportation, the number of employees of the concern and its affiliates must not exceed 500 persons.

1-702. General Policy.

(a) It is the policy of the Department of Defense to place a fair proportion of its total purchases and contracts for supplies, research and development, and services (including contracts for maintenance, repairs, and construction) with small business concerns. Every effort should be made to encourage participation by such concerns in the acquisition of supplies and services that are within their capabilities. Heads of contracting activities and heads of field contracting and contract administration activities are responsible for the effective implementation of the Small Business and Small Disadvantaged Business Utilization Program(s) within their respective activities and for the accomplishment of assigned program goals. Heads of contracting activities and heads of field contracting and contract administration activities will assure that contracting and technical personnel attached to their activities are informed of the benefits that accrue to the Nation and to the Department of Defense through the proper use of the capabilities of small business concerns in the acquisition of military requirements and that these individuals take all reasonable action to increase the level of participation by small business firms in the awards for products and services by their activities.

(b) Small business concerns, both established and potential suppliers (1-701.3 and 1-701.4), shall be afforded an equitable opportunity to compete for all contracts that they can perform. Therefore, the Departments, to the extent consistent with the best interests of the Government and in order to broaden the industrial base, shall:

(i) attempt to locate additional qualified small business suppliers by all appropriate methods, including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(ii) give wide publicity to contracting methods and practices;

(iii) publicize proposed acquisitions by use of advance notices or other appropriate methods (see 1-1003);

(iv) include all established and qualified potential small business suppliers on the bidders' mailing lists (see 2-205);

(v) send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to 2-205.4, at least a pro rata number of small business concerns shall be solicited;

(vi) divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(vii) examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(viii) use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program; and

(ix) maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns.

(c) Except as approved in 3-603.1(g), all proposed acquisitions of supplies or services with an anticipated dollar value of $10,000 or less, which are subject to small purchase procedures, are small business-small purchase set-asides. Each solicitation shall contain the clause in 7-2003.32. In the event the solicitation is oral, information substantially identical to that in 7-2003.32 shall be given to potential quoters.

(d) The extent of participation by small business concerns in defense acquisition shall be accurately measured, reported, and publicized. All solicitations shall require each prospective supplier to represent whether it is a small business or small disadvantaged business concern for purposes of the specific acquisition (see 1-701 and 1-703). Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report), DD Form 1057 (Monthly Procurement Summary by Purchasing Office) (see 1-110 and Section XXI, Part 1); and DD Form 1140-1 (Defense Small Business Subcontracting Program Quarterly Report of Participating Large Company on Subcontract Commitments to Small Business Concerns) (see 1-707).

(e) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of his duties. (See 1-704.4).

(iii) If the determination of the Chairman, Size Appeals Board, Small Business Administration, on the appeal is not received by the contracting officer within the 30 working day period, it shall be presumed that the SBA District Director's size determination has been sustained.

(iv) Until receipt of the SBA determination of the size status, or expiration of the ten day period (30 days in case of an appeal to the Chairman, Size Appeals Board), whichever occurs first, contracting action shall be suspended; however, this suspension shall not apply to any urgent acquisition action which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

(4) *Appeal From Size Determination.* An appeal from a size determination made by an SBA District Director may be taken before the close of business on the fifth working day after the receipt of such decision. Unless such written notice of appeal is received by the SBA Size Appeals Board, Washington, D.C., within this time and the contracting officer has been notified of such appeal prior to award, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(5) *Award of Set-Aside Acquisitions.* Except as provided in 3-508.1 or when the contracting officer determines in writing that award must be made without delay to protect the public interest, award will not be made prior to (i) five working days after the bid opening date for acquisitions placed through small business restricted advertising, or (ii) the deadline date for submitting a protest set forth in the notification to the apparently unsuccessful offeror(s) for small business set-aside acquisitions placed through conventional negotiation.

(c) *Product Classification.*

(1) *Determination by Contracting Officer.* The contracting officer shall determine the appropriate classification of a product or service establishing the small business definition to be used in a specific acquisition. If different products or services are being acquired on the same solicitation, an appropriate small business size standard shall be established for each product or service. Both the classification and the applicable size standard (number of employees, average annual receipts, etc.), pursuant to 1-701, shall be set forth in each solicitation in excess of $10,000, and in each solicitation of $10,000 or less which is a small business set-aside. The contracting officer's determination shall be final unless appealed in accordance with (2) below.

(2) *Appeal From Classification.* An appeal from a product or service classification determination by a contracting officer must be taken:

(i) not less than 10 working days before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations; or

(ii) not less than five working days before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations.

Such appeals shall be directed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Action of Size Appeals Board.* The Size Appeals Board will promptly notify the contracting officer of the receipt of a valid appeal and, if possible, will inform the contracting officer prior to the date set for opening of the solicitation of its ruling on the appeal. The SBA decision, if received prior to the opening date, shall be considered final, and solicitations will be modified to reflect such decision, if necessary. Where appropriate, opening dates may be extended. SBA rulings received after the opening date shall not apply to the current acquisition but shall apply in future acquisitions of the product or service.

1-704 Small and Disadvantaged Business Utilization Officials.

1-704.1 (a) Director of Small and Disadvantaged Business Utilization. The Director of Small and Disadvantaged Business Utilization is responsible for the overall management and direction of the DoD small business, disadvantaged business utilization, and labor surplus area programs and for advising the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Research and Engineering, and the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Policy) in matters relating to these programs. To that end, the Director will provide guidance to the Departments and periodically review the direction and implementation of their activities in promoting contract awards to small business, small disadvantaged business, and labor surplus area concerns.

(b) Director of Small Business and Economic Utilization Policy. The Director of Small Business and Economic Utilization Policy is responsible for the establishment, implementation, and execution of DoD small business and labor surplus area programs. Negotiations with the SBA, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning small business and labor surplus area policy, programs, and DoD goals shall be conducted by the Director of Small Business and Economic Utilization Policy or, with his authorization, by representatives of the Departments. The Director of Small Business and Economic Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding small business and labor surplus area matters.

(c) Director of Disadvantaged Business Utilization Policy. The Director of Disadvantaged Business Utilization Policy is responsible for the establishment, implementation, and execution of the DoD socially and economically disadvantaged business utilization program. Negotiations with the Small Business Administration, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning disadvantaged business

utilization policy, programs, and DoD goals shall be conducted by the Director for Disadvantaged Business Utilization Policy or, with his authorization, by representatives of the Departments. The Director of Disadvantaged Business Utilization Policy on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding disadvantaged business utilization matters.

1-704.2 (a) Departmental Directors of Small and Disadvantaged Business Utilization. Each Department or Agency shall maintain an Office of Small and Disadvantaged Business Utilization as follows:

(i) Army - Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Pentagon, Washington, D.C. 20310;

(ii) Navy - Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, D.C. 20360;

(iii) Air Force - Director, Office of Small and Disadvantaged Business Utilization, DCS/RD&A, Pentagon, Washington, D.C. 20330;

(iv) Defense Logistics Agency - Staff Director, Office of Small and Disadvantaged Business Utilization, Code DLA-U, Cameron Station, Alexandria, Virginia 22314;

(v) National Security Agency - Director, Office of Small and Disadvantaged Business Utilization, Fort Meade, MD 20755;

(vi) Defense Communications Agency - Director, Office of Small and Disadvantaged Business Utilization, Code 260, Washington, D.C. 20305;

(vii) Defense Nuclear Agency - Director, Office of Small and Disadvantaged Business Utilization, (Code OAFR), Washington, D.C. 20305.

(viii) Defense Mapping Agency - Director, Office of Small and Disadvantaged Business Utilization, Headquarters, Washington, D.C. 20305.

(b) Each Departmental Office of Small and Disadvantaged Business Utilization shall be managed by a Director who shall be appointed by the Secretary of the department and shall be responsible to and report directly to the Secretary or Under Secretary of the Department. Directors of Defense agencies shall appoint a Staff Director for Small and Disadvantaged Business Utilization who shall be responsible to and report directly to the Director or his Deputy.

(c) The primary responsibility of the Director or Staff Director of each Office of Small and Disadvantaged Business Utilization shall be in matters concerning small business, small disadvantaged business utilization, and labor surplus areas.

The Director or Staff Director advises the Secretary on small business, small disadvantaged business utilization and labor surplus area matters, implements such DoD programs within the Department or Agency and represents the Department or Agency in negotiations with other Departments or Governmental agencies on small business, small disadvantaged business utilization and labor surplus area matters. The Director or Staff Director will exercise supervisory authority over Department or Agency Small and Disadvantaged Business Utilization Specialists regarding small business, disadvantaged business utilization and labor surplus area matters. Appointment of Small and Disadvantaged Business Utilization Specialists shall be made after consultation with the Director or Staff Director of the Office of Small and Disadvantaged Business Utilization for the Department or Agency involved. In addition, such Director shall be afforded an opportunity to comment upon, and contribute to the performance evaluations of the Specialists for the contracting activities and contract administration offices or major organizational elements of the Department involved, including pay pursuant to the Civil Service Reform Act of 1978.

1-704.3 Small and Disadvantaged Business Utilization Specialists.

(a) Small and disadvantaged business utilization specialists shall be appointed by name, in writing, for contracting activities, contract administration offices, and other such offices, as the Departments consider appropriate. They shall be responsible directly to the appointing authority and shall not be subject to the direction of contracting, contract administration, or technical personnel. The appointing authority, without power of redelegation, is as follows:

(i) Army - Commanders of major commands, Commanders of major subordinate commands, and installation, post, camp, station or activity commanders. For each major command, one specialist will be appointed as the Associate Director for Small and Disadvantaged Business Utilization, reporting directly to the Commander or the second-in-command. The Associate Director will have primary responsibility for the effective implementation of the Army's small business, disadvantaged business utilization, labor surplus area and other socio-economic business programs within the Command. The Associate Director for Small and Disadvantaged Business Utilization Policy at Major Command Headquarters other than at the Materiel Development and Readiness Command (DARCOM), Office, Chief of Engineers (OCE), Forces Command (FORSCOM), Training and Doctrine Command (TRADOC), may be assigned on a part-time basis.

(ii) Navy - Head of a contracting activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;

(iii) Air Force - Commander of each central procurement activity; the Wing/Base Commander of each local purchasing activity and the Chief of each contract administration activity. In addition, an Executive for Small and Disadvantaged Business Utilization shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force small business, small disadvantaged business utilization and labor surplus area program(s) within the Command;

(iv) Defense Logistics Agency - Commanders of Defense Supply Centers, Commanders, Defense Contract Administration Services Regions and Commanders of other DLA contracting activities;

(v) National Security Agency - the Director;

(vi) Defense Communications Agency - the Director;

(vii) Defense Nuclear Agency - the Director;

(viii) Defense Mapping Agency - Director; directors of subordinate components.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Department or Agency Office of Small and Disadvantaged Business Utilization (1-704.2). In addition to performing that portion of the specific program outlined in (b) below that is normally performed in the activity to which he is assigned, the small and disadvantaged business utilization specialist shall advise the head of the activity and shall perform such additional functions as are prescribed for him in furtherance of the overall small business, small disadvantaged business utilization and labor surplus area programs. A small and disadvantaged business utilization specialist shall be appointed on a full-time basis in all activities having sufficient business or program responsibility to justify such action. When the volume of contracting does not warrant assignment of a full time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over collateral responsibilities.

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(b) A small and disadvantaged business utilization specialist (SADBU), appointed pursuant to (a) above, shall: perform the following duties, as determined to be appropriate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADBU shall:

(i) maintain a program designed to locate capable small business, small disadvantaged business and labor surplus area business sources for current and future acquisitions, through SBA or other methods;

(ii) coordinate inquiries and requests for advice from small business, small disadvantaged business and labor surplus area business concerns on acquisition matters;

(iii) prior to the issuance of solicitations or contract modifications (A) for additional supplies or services in excess of $2,500 which have not been set aside under 1-706.1(c) or (B) for a dissolved small business-small purchase set-aside (1-702(c)), review the contracting officer's justification for either action. This review is not required for purchases made under automated small purchase systems where necessary and adequate review is performed prior to entering the item into the automated system. Disagreements between the specialist and the contracting officer on proposed set-aside actions for small business (not including small business-small purchase set-asides (1-702(c))) shall be resolved under 1-706.3.

(iv) when small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings for the current or future acquisitions, as appropriate, are available;

(v) review acquisition programs for possible breakout of items suitable for acquisition from small business concerns;

(vi) insure that financial assistance, available under existing regulations, is offered and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts. (See Appendix E, Parts 4 and 5.)

(xxvi) advise and assist contracting officers in discharging their responsibilities by:

(A) monitoring and reviewing contractor performance to determine compliance with small and disadvantaged small business subcontracting plans;

(B) developing and maintaining records and reports that reflect such compliance or noncompliance.

1-704.4 *Small Business Technical Advisor.*

(a) A Small Business Technical Advisor (SBTA) appointed pursuant to 1-702(e) shall be a full-time employee of the contracting activity and shall be well qualified, technically trained, and familiar with the supplies or services acquired at the activity.

(b) The principal duty of this advisor shall be to assist the SBA Procurement Center Representative in his duties and functions relating to Sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the SBTA.

1-705 Cooperation With the Small Business Administration.

1-705.1 General. The Directors Small and Disadvantaged Business Utilization are responsible for consulting and cooperating with the Administrator, SBA in formulating and implementing policies and programs for small business and small disadvantaged business participation in Defense contracting and subcontracting. Department of Defense contracting and contract administration activities are responsible for working with the SBA in carrying out these policies and programs, in accordance with the provisions of this paragraph 1-705.

1-705.2 SBA Representatives.

(a) SBA may assign representatives to any contracting or contract administration activity on a full or part time basis to carry out SBA policies and programs. The SBA representative shall be informed of the mission of the activity. In accordance with the procedures of the Department or Agency concerned, SBA shall obtain security clearances for each of its representatives. SBA representatives and employees shall comply with Departmental directives concerning the conduct of Department of Defense contracting personnel. The duties of the assigned SBA representatives include review of proposed acquisitions to recommend to the contracting activity (i) set-asides on selected acquisitions not unilaterally set aside by the contracting officer, (ii) new qualified potential small, disadvantaged and labor surplus area business sources, and (iii) breakout of components for competitive acquisition. SBA representatives may also conduct periodic reviews of contracting activities to ascertain whether there is compliance with the small, disadvantaged and labor surplus area business policies prescribed by DAR.

(b) The contracting activities shall include in the appropriate bidder's list, or in any group of firms to be solicited in specific acquisitions, the names of firms submitted by SBA, unless there is a valid reason for not so doing.

(c) If the contracting officer determines not to solicit a firm recommended by SBA in a particular acquisition, and, as a result no small business firm will be solicited, SBA may appeal such determination to the Chief of the Contracting Office.

1-705.3 Access to Contracting Information. Upon request, and subject to applicable security regulations, the small and disadvantaged business utilization specialist shall provide SBA representatives access to available or reasonably obtainable information, including technical data (including drawings and specifications), contract history, bidders lists, and acquisition planning information. The SBA representative will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program.

1-705.4 *Certificates of Competency.*

(a) SBA has statutory authority to certify the competency of any small business concern as to all elements of responsibility including but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity except regulatory requirements under the jurisdiction of other Federal agencies. Contracting officers shall accept SBA certificates of competency as conclusive of a prospective contractor's responsibility (see 1-903.1, 1-903.2 and 1-903.3) unless the contracting officer has substantial doubt as to the concern's ability to perform, in which case the procedures in (f) apply. For nonmanufacturing industries, see 1-701.1(a)(2)*c*.

(b) In acquisitions where the highest competence obtainable or the best scientific approach is needed, as in certain negotiated acquisitions of research and development, highly complex equipment, or personal or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible, the certificate of competency procedure is applicable.

(c) If a bid or proposal of a small business concern is to be rejected because the contracting officer has determined the concern to be nonresponsible, the matter shall be referred to the appropriate SBA field office having the authority to process the referral in the geographical area involved. Such referrals shall not be made where the acquisition is made pursuant to small purchase procedures. If required, guidance as to the location of the appropriate SBA field office may be obtained from an SBA representative assigned to the contracting activity or the nearest SBA field office. A preaward survey, in accordance with 1-905.4, shall be conducted prior to a determination by a contracting officer that a small business concern is not responsible on a proposed award, except when small purchase procedures are used. Concurrent referrals of two or more bids or proposals, rejected because of nonresponsibility for a proposed award, shall not be made to SBA by the contracting officer. Final processing of a case, including possible issuance of a COC, must be completed by SBA on each referral before the contracting officer may proceed with an additional referral on the proposed award to SBA. If a partial set-aside is involved and the bid of a small business concern on the unreserved portion is to be rejected for nonresponsibility and the same small business concern is entitled to consideration on the reserved portion of the set-aside if a COC is issued by the SBA, the entire quantity of the acquisition (reserved and unreserved) for which that small

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business concern may be entitled, if competent, shall be referred to SBA and the referral papers so noted. The contracting officer may request SBA to certify the small business concern for the maximum quantity of the acquisition for which it has been determined responsible. The award shall be withheld until SBA action concerning issuance of a COC or until 15 working days after the SBA is so notified, whichever is earlier, subject to the following:

(1) Under no circumstances will a referral be made to the SBA prior to a determination by the contracting officer that the offer of the small business concern is responsive. Except for acquisitions resulting in construction or service contracts, an offer of an otherwise eligible nonmanufacturer shall not be referred to the SBA for COC action if the offeror agrees that he does not meet the definition of small business for preferential treatment purposes as prescribed in 1-701.1(a)(2)*c*. Disagreements will be resolved in accordance with 1-703(b).

(2) The activity performing the preaward survey shall furnish the survey to the PCO. If the PCO determines, in accordance with 1-904, that the small business concern is not responsible, he will refer the matter directly to the SBA, or he may notify the preaward survey activity to refer the matter to the SBA, whichever is the more expeditious (e.g., where the surveying activity is nearer to the cognizant SBA office).

(3) *a*. Upon making a determination to refer the matter to the SBA, the PCO shall furnish to the SBA, or to the surveying activity, whichever is consistent with the action taken under (2) above, the data described in (d) below. The activity that refers the matter to the SBA shall maintain close liaison to insure compliance with ((e) below. If the activity does not hear from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a Certificate of Competency (COC) is being processed. When, in accordance with (2) above, the PCO has requested the preaward survey activity to refer the matter to SBA, that activity shall keep the PCO advised of significant developments, including the results of any inquiry to the SBA at the end of the 5-working-day period, and any new or additional facts that warrant a change in the preaward survey activity's findings.

b. The departmental Director or Staff Director of Small and Disadvantaged Business Utilization, identified in 1-704.2(a), shall be informed by the contracting activity Small and Disadvantaged Business Utilization Specialist, in writing, on a quarterly basis, of all certificate of competency cases initiated during a particular quarter and of the final disposition made on cases during the quarter, including the number and dollar value of COCs issued during the period. The information shall include company name, item being acquired, solicitation number, dollar value of the contract, and the date the case was submitted to SBA. In addition, advice and data will be furnished for all cases where (i) the small business concern elects not to file an application for a COC; or (ii) SBA declines to issue a COC; or (iii) the contracting activity reverses the preaward survey activity's negative finding concerning responsibility, withdraws the request for the COC, and makes the award. This reporting requirement is assigned RCS DD-DR&E(Q)1152.

(4) *Reserved*.

(5) A referral need not be made to the SBA if a contracting officer determines a small business concern to be unqualified and ineligible pursuant to 1-903.1(v) and if the determination is approved by the head of the contracting activity or his designee.

(6) A referral need not be made to the SBA if a small business concern has been suspended or debarred pursuant to Executive Order 11246 or DAR 1-600.

(7) A determination by a contracting officer that a small business concern is not responsible must be supported by substantial evidence documented in the contract files.

(d) It is the policy of the Department of Defense to endeavor to reach agreement with the SBA regarding the responsibility of a small business concern. To assist the SBA and to insure that it has the benefit of the view of the Department, the SBA shall be furnished three copies of the solicitation, one copy of the pertinent drawings and specifications, the preaward survey findings, pertinent technical and financial information, and, if available, the abstract of bids and other pertinent information which supported the contracting officer's determination of nonresponsibility.

(e) SBA field offices will notify the PCO of each case where they (i) plan to issue a Certificate of Competency or (ii) are submitting a case to SBA, Washington, D.C., for approval prior to issuance of a Certificate of Competency, and will provide the contracting officer or his designated representative with a brief written statement citing the reasons for SBA's proposed affirmative action. Prior to final SBA action, the PCO (or the preaward survey activity when authorized to act as his representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the PCO or his representative at such a meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or his representative, but such files will not be released outside of SBA. Personnel from a contracting office or surveying activity who participated in a preaward survey of the prospective contractor or other personnel having cognizance of the survey shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the Departments through a complete exchange of preaward information developed by each agency.

(f) If, after complying with (e) above, doubt still exists as to the ability of the contractor to perform, the contracting officer shall request the SBA field office to suspend action and to forward the case to SBA, Washington, D.C. (HQ SBA), for review. If HQ SBA does not concur with the proposed affirmative action of its field office, it will so inform the contracting officer by telephone followed by written confirmation. If HQ SBA concurs with the affirmative

action proposed by its field office, it will so inform the Department or Agency Director or Staff Director of Small and Disadvantaged Business Utilization identified in 1-704.2, providing a brief written statement of reasons for the proposed affirmative action. Within 10 working days after receipt of written confirmation, or such longer periods as may be agreed upon between them, the Department Director of Small and Disadvantaged Business Utilization will inform HQ SBA whether his Department will present a formal appeal to HQ SBA for its consideration prior to its reaching a final decision on the issuance of a COC. Such appeal will be presented to HQ SBA within a maximum of 20 working days after HQ SBA is informed that an appeal will be taken, or at such longer period as may be agreed upon by the Department Director or Staff Director of Small and Disadvantaged Business Utilization and HQ SBA. The 15-day period referred to in (c) shall be automatically suspended when the contracting officer requests SBA to suspend action and forward the request to HQ SBA for review in accordance with this paragraph. If the Department elects to present a formal appeal to HQ SBA, a factual case shall be prepared as expeditiously as possible and processed through departmental channels for approval at the Secretarial level prior to presenting the matter to HQ SBA. Any competent level of review within the Department or Agency may conclude that a formal appeal should not be made and that the contract should be awarded to the small business concern in question without a COC or that a COC should be accepted and the award made. If such action is taken, the contracting officer and HQ SBA shall be advised accordingly. OSD Director of Small and Disadvantaged Business Utilization will be informed by the Department or Agency Director of Small and Disadvantaged Business Utilization of proposed appeals to HQ SBA and a representative of OSD Director of Small and Disadvantaged Business Utilization may join with a Department team on each formal appeal to HQ SBA. Following an appeal, the determination, if affirmative, made by the SBA Associate Administrator relative to Certificate of Competency action shall be considered conclusive, and the contracting officer shall award the contract to the concern without requiring the concern to meet any other requirement of responsibility.

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(g) If, subsequent to the request for a COC but prior to the SBA's final action on it, new additional facts so warrant, the negative determination as to responsibility of the apparent low bidder or offeror shall be reversed and the contract awarded. The PCO shall promptly inform the SBA field office of his action.

(h) When the contracting officer has questioned only one of the general standards of responsibility of a small business offeror, but the SBA has declined to issue a COC due to its findings concerning the offeror's capability to perform under a different standard of responsibility, the responsible SBA office will inform the contracting officer of the basis for its decision. The information furnished by SBA to the contracting officer will generally consist of a copy of the letter sent to the offeror in question, explaining why SBA declines to issue a COC. This information will be considered by the contracting officer in making an award of the contract.

1-705.5 *Contracting With the Small Business Administration.*

(a) *Authority.* Pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) the SBA is empowered to enter into contracts with the Departments for supplies, services, and construction. In any case in which the SBA certifies to any officer of the Government having contracting authority that the SBA is competent and responsible to perform any specific Government contract, such officer shall be authorized in his discretion to let such contract to the SBA upon such terms and conditions as may be agreed upon between the SBA and the contracting officer. Such offers to contract with the SBA are conditioned upon the matter, in the event of a disagreement, being submitted for determination to the Secretary of the appropriate department by the Administrator of the SBA. Notification of a proposed referral to the head of the department or agency by the SBA must be received by the contracting officer within 5 days after the SBA is formally notified of the contracting officer's decision. Thereafter, the SBA must provide the request for determination to the head of the department or agency within 15 days. If timely notice of appeal or an appeal is not made, the offer is rescinded. The SBA is further empowered to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for supplies, services, or construction as may be necessary to enable the SBA to perform such contracts.

(b) Policy.

(1) General. It is the policy of the DoD to enter into contracts with the SBA to foster business ownership by individuals who are both socially and economically disadvantaged and promote the competitive viability of firms owned by such individuals in order that they may have the opportunity to full participation in the free enterprise system.

(2) Business Development Expense. In contracting with the SBA, any costs to DoD which are in excess of the estimated current fair market price anticipated under normal contracting procedures shall be funded by the SBA. These costs, hereafter referred to as business development expenses, include start-up, make ready, training, or similar initial investment or learning costs in excess of those that would normally be incurred by established firms engaged in the same type of business. Upon request by SBA, data used by the contracting officer to make a determination as to the estimated current fair maket price shall be made available to that agency. The estimated current fair market price shall be predicated on the basis of "likely costs" under normal competitive conditions rather than on the basis of the "lowest possible cost." When there is agreement between SBA and the PCO as to the estimated current fair market price of a proposed 8(a) requirement, the responsibility for reviewing, validating, approving, and funding any business development expense shall be assumed by SBA.

(3) *Contract Assistance.* To the extent consistent with DoD capability and resources, SBA contractors furnishing defense requirements shall be afforded production assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

(4) Contract Negotiations. Any small business concern selected by the SBA to perform a contract to be let under these provisions shall, when practicable, participate in any negotiations of the terms and conditions of the contract between SBA and the contracting office. When it is mutually agreeable between the SBA and the contracting activity, SBA may authorize the contracting activity to negotiate the proposed subcontract schedule provisions with the 8(a) subcontractor. Any agreements which may be reached as the result of such negotiations must be approved by the SBA prior to award of the contract.

(5) SBA Waiver of Bonds. A small business concern shall not be required to provide any amount of any bond in performance of an 8(a) contract, if the Administrator of the SBA determines in accordance with Section 8(a)(ii) of the Small Business Act that such amount is inappropriate for the concern in performing the contract.

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Utilization or his designee of the intent to proceed with the acquisition without further regard to the Section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the requirement.

(D) It will be the responsibility of the SBA to provide written certification as to its competency to perform the contract in the form of a provision in the SBA contract with the DoD contracting office substantially as follows:

> SBA certifies that it is competent to perform the requirement as stated in this contract.

(E) A pre-award survey of the SBA's contractor, as required by 1-905.4, will not generally be requested by the DoD contracting officer. The SBA or the DoD contracting officer may request a cognizant contract administration office to assist in a review of a specific element pertaining to the SBA's contractor's responsibility.

(F) Certified cost or pricing data, when required by 3-807.3, or needed to determine an estimated current fair market price, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of cost or pricing data with a supporting certificate.

(G) Subsequent to agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price and receipt of the SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed with the award of a contract to the SBA.

(H) For follow-on year acquisitions in support of the SBA requested commitment, the SBA will initiate individual requests to the Department concerned for each ensuing proposed Section 8(a) contract. This process will permit, prior to actual negotiations of follow-on Section 8(a) awards, the Department to verify the availability of requirements, funding and other pertinent factors. It will be the responsibility of the SBA to provide certification for each Section 8(a) contract in accordance with 1-705.5(c)(1)(D).

(I) To assist the SBA, DoD contracting offices shall prepare two contract sets, as follows:

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(i) Prepare Standard Form 26 for use by the SBA with the SBA's contractor. The Standard Form 26 shall show "15 USC 637(a)" in Block 13 and contain all of the information required with the exception of the following, which will be inserted by the SBA:

(*a*) Block 1, the SBA contract number, which will be constructed in general conformance with Section XX, Part 2;
(*b*) Block 2, the effective date;
(*c*) Block 24, the signature of the SBA's contractor;
(*d*) Block 25, the SBA contractor's date;
(*e*) Block 27, the signature of the SBA's contracting officer;
(*f*) Block 28, the name of the SBA's contracting officer; and
(*g*) Block 29, the date signed

The contract shall incorporate the general provisions of Standard Form 32, including DoD alterations thereto, and other appropriate provisions as required, recognizing that this contract will be executed between the SBA and the SBA's contractor. The contract also shall include the appropriate one of the following clauses:

(*a*) For all contracts excepting civil works contracts of the Corps of Engineers—

> JURISDICTION OVER DISPUTES APPEALS (1979 MAR)
>
> For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-563, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Armed Services Board of Contract Appeals.

(*b*) For civil works contracts of the Corps of Engineers—

> JURISDICTION OVER DISPUTES APPEALS (1979 MAR)
>
> For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-563, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Engineer Board of Contract Appeals.

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(i) a summary of the scope of the proposed work;
(ii) detailed Government cost estimates;
(iii) plans and specifications;
(iv) required performance schedules;
(v) any other pertinent and reasonably available data.

The Department, through the Director of Small and Disadvantaged Business Utilization or his designee will notify the appropriate contracting office to identify the work project(s) for negotiation of a Section 8(a) contract with the SBA. Within ten working days after notification, the SBA will establish contact with the contracting office and initiate negotiation of the Section 8(a) contract in support of the SBA and initiate requested commitments. If negotiations with the contracting office have not been initiated by the SBA within the time indicated, the contracting office will notify the Departmental Director of Small and Disadvantaged Business Utilization or his designee of the intent to proceed with the acquisition without further regard to the Section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the work project.

(D) Provisions of the Miller Act with respect to performance and payment bonds do not apply to the prime contract between the contracting office and the SBA, but shall apply to the contract between the SBA and its contractor unless the SBA waives the bond requirement as provided for in 1-705.5(b)(5).

(E) Certified cost or pricing data, when required by 3-807.3 or needed to determine an estimated current fair market price, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of appropriate cost or pricing data with a supporting certificate.

(F) It will be the responsibility of the SBA to provide written certification as to its competency to perform the contract. Such certification may be made in accordance with 1-705.5(c)(1)(D).

(G) Subsequent to agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price, and receipt of the SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed with the award of a contract to the SBA.

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(H) To assist the SBA, contracting offices shall prepare two contract sets as follows:

(i) prepare appropriate contractual documents for use by the SBA with the SBA's contractor. These documents shall be completed, except for signatures and award information (see (c)(I)(i)), based on information requested or furnished by the SBA. This contract shall incorporate the mandatory general provisions and standard forms as required and also shall include the appropriate one of the following statements:

(*a*) For all contracts excepting civil works contracts of the Corps of Engineers—

JURISDICTION OVER DISPUTES APPEALS (1979 MAR)

For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-563, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Armed Services Board of Contract Appeals.

(*b*) For civil works contracts of the Corps of Engineers—

JURISDICTION OVER DISPUTES APPEALS (1979 MAR)

For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-563, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Engineer Board of Contract Appeals.

(ii) prepare Standard Form 19 or Standard Form 23 or other appropriate forms for execution with the SBA without incorporating any general provisions. The general provisions are not applicable to the SBA. "10 USC 2304(a)(17)" shall be cited as the authority for negotiations of this contract. This contract shall include a statement as follows:

It is agreed that the provisions of the "Termination for Convenience," "Changes," "Differing Site Conditions," "Default-Damages for Delay-Time Extensions," "Suspension of Work," "Disputes," "Price Reduction" and "Payments to Contractor" clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the DoD Contracting Officer. If the SBA does not agree with the DoD Contracting Officer's request, the case shall be referred to the Secretary or his designee for decision.

(ii) If the total proposed 8(a) contract price exceeds the estimated current fair market price (*i.e.*, it includes a business development expense), such expense shall not be funded by DoD. SBA has stated that it does not generally expect to assume business development expenses for construction. If SBA elects to pay such expenses, as an exception to its general rule, it will issue an SBA reimbursable order for the agreed amount to the DoD PCO in advance of contract award. If SBA requests audit assistance in determining the reasonableness of the proposed 8(a) price, such assistance will be furnished by the DoD to the extent available. In the event SBA elects not to fund the business development expense, award will not be made to SBA unless the proposed contract price is reduced by the amount of such expense.

1-705.6 *Small Business and Disadvantaged Business Goals.*

(a) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(b) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command.

(c) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(d) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department. Such reports shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

1-706 Set-Asides (Except Small Business-Small Purchase Set-Asides (1-702(c))).

1-706.1 *General.*

(a) Small business and labor surplus area (LSA) set-asides should be considered in the following order of precedence:

(i) Combined small business/LSA set-aside (1-706.7);
(ii) Partial set-aside for LSA firms (1-804.2);
(iii) Total set-aside for small business firms (1-706.5);
(iv) Partial set-aside for small business (1-706.6).

(b) Subject to the order of precedence established in (a) above, any individual acquisition or class of acquisitions, or any appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is determined to be in the interest of (i) maintaining or mobilizing the Nation's full productive capacity, (ii) war or national defense programs, or (iii) insuring that a fair proportion of Government acquisition is placed with small business concerns.

(c) Proposed acquisitions over $2,500 that are not subject to simplified small purchase procedures shall be specifically reviewed for set-aside for exclusive participation by small firms in accordance with 1-706.5. In automated contracting systems, all proposed acquisitions which are not small business-small purchase set-asides (1-702(c)) will be considered for small business set-asides in accordance with 1-706.5. If necessary, the screening for set-asides will be accomplished before entering such requirements into the system.

(d) The contracting officer is responsible for either setting aside a requirement or documenting, in accordance with departmental procedures, why a set-aside is inappropriate. The Small and Disadvantaged Business Utilization Specialist is responsible for reviewing those acquisitions not set aside and for taking action in accordance with 1-706.3 as appropriate.

(e) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the SBA representative and concurred in by the contracting officer. Insofar as practicable, unilateral determinations rather than

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(vii) a class set-aside of the time or service concerned has been made at some other contracting activity; or

(viii) the item will be described by "brand name or equal."

(k) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

1-706.2 Contract Authority. Contracts for total (including combined small business/LSA) or partial set-asides entered into by conventional negotiation (see 1-706.5(b) and 1-706.6(d) or by "Small Business Restricted Advertising" (see 1-706.5(b)) are negotiated acquisitions and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see 3-201.2(b)(ii) or 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

1-706.3 Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals.

(a) Prior to issuing solicitations each individual acquisition governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that acquisition of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist and the SBA representative, if available, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual acquisitions.

(b) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set aside the contracting officer shall promptly either:

(i) concur in the recommendation, or

(ii) disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of 1-706.3(h).

(d) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of 1-706.3(e).

(e) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual acquisition (1-706.1(h)) or class of acquisitions or a portion thereof (1-706.1(i)), he shall notify the SBA representative, in writing, within 5 working days. If the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint or unilateral set-aside determination, the SBA representative shall be allowed 2 working days to appeal, in writing, to the chief of the contracting office for decision. The chief of the contracting office shall be allowed 7 working days to provide the SBA representative his decision, in writing, whether or not the acquisition will be set aside. Within 1 working day after receipt of a decision approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend contracting action pending a further appeal by the Administrator of SBA to the Secretary of the Department concerned. The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken. When an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the 15-day period, the matter shall be forwarded, with full justification of the action taken, through normal channels, including the appropriate departmental Small Business Advisor as identified in 1-704.2, to the Secretary of the Department concerned.

(f) Any contracting action which has been appealed by the SBA representative shall be suspended pending the decision of the Chief of the Contracting Office. If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with (e) above, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in (e) above), or (ii) the matter is determined by the Secretary of the Department concerned. However, this procedure shall not apply to any particular contracting action that the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement of justification approved at a level above the contracting officer. The contracting officer shall promptly give written notice to the SBA representative of any such contracting action initiated.

(g) The Secretary of the Department concerned will have 30 working days to either sustain or deny the appeal for set-aside action. Should it be determined that a decision cannot be made within this time, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, OUSDRE(AP).

(h) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 1-704.3(a)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or his designee as identified in 1-704.2.

(i) A signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

1-706.4 *Reporting for Department of Commerce Procurement Synopsis.* See 1-1003.8

1-706.5 *Total Set-Asides.*

(a)(1) Subject to the order of precedence established in 1-706.1(a), the entire amount of an individual acquisition or class of acquisitions, including contracts for architectural and engineering services, research, development, test and evaluation, maintenance repair, and construction, except small business-small purchase set-asides (1-702(c)), shall be set aside for exclusive small business participation (1-701.1) if the contracting officer determines that there is a reasonable expectation that (i) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (ii) awards will be made at reasonable prices (1-706.3(a)). Total set-asides shall not be made unless such a reasonable expectation exists (but see 1-706.6 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-sides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(2) Every proposed acquisition for construction, including maintenance and repairs, in excess of $2,500 and under $2 million (except dredging under $1 million) shall be considered individually, as though the Small and Disadvantaged Business Utilization S[illegible] [illegible]ted a set-aside request, and the procedures of 1- [illegible] apply.

(3) Every [illegible] [illegible]tion of $2 million or more for construction, [illegible] or more for dredging, shall be considered on [illegible] individual acquisition basis under (1) above.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of contracting known as "Small Business Restricted Advertising." The latter method shall be used wherever possible (see also 3-201.3). Where multiyear contracting procedures are appropriate (see 1-322), total set-asides may be made in connection therewith. Solicitations shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Section II, except that bids and awards shall be restricted to small business concerns. Bids received from firms that do not qualify as small business concerns shall be considered as nonresponsive and shall be rejected.

(c) In acquisitions involving total set-asides for small business, each solicitation shall contain the clause in 7-2003.2. The applicable size standards shall be set forth in Section C of the solicitation.

in the clause. An offeror entitled to receive the award for quantities of an item under the non LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see 1-312), or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a).

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a), applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of 21-102 and 21-201, the non-LSA-set-aside portion shall be reported separately.

1-706.8 *Automatic Dissolution of Set-Asides.* If the entire set-aside portion is not procured by the method(s) set forth in 1-706.5, 1-706.6, or 1-706.7, the determination referred to in 1-706.1 is automatically dissolved as to the unawarded portion of the set-aside, and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see 3-201.2(b)(ii) and 3-210.3 as to negotiation). Since a considerable

time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see 1-305.2) to insure that it is realistic in the light of all relevant factors including the capabilities of small business concerns.

1-707 Subcontracting With Small Business and Small Disadvantaged Business Concerns.

1-707.1 *General.*

(a) Pursuant to Section 8(d) of the Small Business Act (15 U.S.C. 637(d)), it is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. For purposes of this part, the term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(b) Contract modifications (1-201.2) to contracts which do not contain the clause in 7-104.14(a) and which are within the scope of the contract do not require subcontracting plans. However, a modification which reflects the addition of work beyond the scope of the contract and which is made for administrative convenience when a separate contract would otherwise have been appropriate shall require a subcontracting plan if the criteria of 1-707.3(a) and (b) are met.

(c) The value of options and similar provisions shall be included in determining whether the contract may exceed the dollar threshold for subcontract plans. Such options shall be included in the subcontracting plan.

(d) Letter contracts and similar undefinitized instruments, which would otherwise meet the requirements of 1-707.3(a) and (b), should contain a preliminary basic plan addressing the requirements of 7-104.14(b) wherever practicable and require the negotiation of final details within 90 days after award or before definitization, whichever occurs first.

(e) Due to their unique circumstances, major weapons system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate the negotiation of subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small business and small disadvantaged business concerns participation and

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preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (i) may require offerors to include proposed subcontracting plans in their initial proposals and (ii) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.

1-707.2 *Review Responsibilities.*

(a) *General.* The clause specified in 1-707.3(a) requires the contractor to afford small business concerns the maximum practicable opportunity to participate in contracts consistent with their efficient performance. The clauses specified in 1-707.3(b) and (c) require the submission of subcontracting plans regarding the contractor's obligation to award subcontracts to small business concerns.

(b) *PCO Responsibilities.*

(1) The PCO shall:

(i) assure that a subcontracting plan is submitted when required.

(ii) determine the adequacy of the subcontracting plan.

(iii) consider the contractor's past compliance with the clause specified in 1-707.3(a) and with subcontracting plans as a factor in determining the contractor responsibility.

(iv) determine any fee payable when an incentive is used in conjunction with the subcontracting plan.

(v) notify the SBA's resident Procurement Center Representative (PCR) of and provide him an opportunity to review solicitations for contracts which will include the clause at 7-104.14(a) and which may exceed $1 million in the case of contracts for construction and $500,000 in the case of all other contracts.

(vi) notify the resident PCR of and provide him the opportunity to review all proposed subcontracting plans under negotiated contracts, including proposed contract modifications, prior to their acceptance by the PCO. Additionally, the apparent successful offeror's proposal and its supporting documentation, if any, which has been furnished to the Government in the course of the negotiations, shall also be made available to the resident PCR upon request. The notice shall be issued in sufficient time to provide the resident PCR

a reasonable time to review the subcontracting plan proposal and related documents and to submit advisory recommendations to the PCO. Failure of the PCR to respond to the PCO in a reasonable time shall not delay award of the contract.

(vii) upon award of a contract or other contractual action containing a subcontracting plan, provide a copy of the award document (a copy of the DD 350 will suffice) to the Assistant Regional Administrator for Regional Programs in the SBA region where the principal contract performance is to take place and a copy of the plan to the resident PCR.

(2) Subcontracting plans shall be reviewed by the PCO for adequacy. All plans must include the six elements required by the clause. On negotiated contracts, the adequacy of the plan is determined by the PCO based on the negotiations of each of the six elements. The final plan must be acceptable to the PCO before the award can be made. If, under a formally advertised solicitation, a bidder submits a plan which does not cover each of the six elements, the contracting officer should advise him of the deficiency and request submission of a new plan by a specific date. If, after such notification, the bidder does not submit a complete and responsive plan within the time allotted, the bid should be rejected as nonresponsive. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 7-104.14(a), the contracting officer may find the bidder nonresponsible in accordance with 1-903.

(3) The ACO shall monitor contractor compliance in accordance with 1-406(c)(xlvi) and apprise the PCO. Upon contract completion, if the contractor did not comply in good faith with the subcontracting plan and/or the clause specified in 1-707.3(a), the PCO, based on recommendations from the ACO, shall document the noncompliance in writing and include the reasons. A copy of this documentation shall be provided to the ACO.

(c) *ACO Responsibilities.* The ACO is responsible for assisting in the evaluation of subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause specified in 1-707.3(a) and any subcontracting plan included in a contract. The SADBUS assigned to the contract administration office shall provide the PCO advice and assistance for use in determining the acceptability

of a plan and, through the ACO, shall provide the necessary information and advice to support the PCO, as appropriate, by furnishing:

(i) documentation on a contractor's performance and compliance with subcontract plans under previous contracts;

(ii) information on the extent to which the contractor's goals for small business and small disadvantaged business participation are being met;

(iii) information on whether the contractor's efforts to insure such participation are in accordance with the efforts described in the subcontracting plan;

(iv) information on whether the contractor is requiring its subcontractors to adopt similar subcontracting plans; and

(v) immediate notice if, during performance, the contractor is failing to meet his commitments under the clause at 1-707.3(a) or the subcontracting plan.

(d) *Evaluation of Plans and Performance.* The clauses specified in 1-707.3(b) and (c) require the minimum information goals and assurances that each subcontracting plan shall include. There are no detailed standards which apply to every situation. The PCO's consideration of a plan must reflect the circumstances of the particular acquisition. Factors to consider include—

(i) previous involvement of small business concerns as prime or subcontractors in similar acquisitions;

(ii) methods of involving small business concerns as subcontractors in such acquisitions; and

(iii) the type of records which contractors have maintained to demonstrate the methods by which they intend to meet the goals and requirements of the plan.

(e) *Involvement of the Small Business Administration.* The Small Business Administration is authorized to:

(i) assist both departments and contractors in complying with their responsibilities with regard to subcontracting plans;

(ii) review any solicitation for any contract which is to include the clause required by 1-707.3(b) or (c) to determine whether maximum practicable opportunity has been afforded small and disadvantaged businesses to participate as subcontractors

in the performance of any contract resulting from any solicitation and to submit its findings, which shall be advisory in nature, to the contracting activity; and

(iii) evaluate compliance with subcontracting plans, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

The SBA is not authorized to prescribe the extent to which any contractor or subcontractor shall subcontract; specify concerns to which subcontracts shall be granted; or exercise any authority regarding the administration of individual prime contracts or subcontracts. The Office of Minority Small Business and Capital Ownership Development, Small Business Administration, has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business.

1-707.3 *Required Clauses.* In compliance with the requirements of the Small Business Act, the following clauses, as appropriate, shall be included in prime contracts.

(a) The Utilization of Small Business and Small Disadvantaged Business Concerns clause in 7-104.14(a) shall be included in all contracts exceeding $10,000 except those which, including all subcontracts, will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or those which are for services personal in nature.

(b) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Negotiated) clause in 7-104.14(b) shall be included in all solicitations for negotiated contracts or modifications (including contracts and modifications placed on a sole source basis) which (i) offer subcontracting possibilities; (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to include the clause in 7-104.14(a). However, the clause at 7-104.14(b) shall not be included in any solicitation which has been set aside for small business concerns or which requirement is to be procured through the Section 8(a) program.

(c) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Advertised) clause in 7-104.14(c) shall be included in all solicitations for formally advertised contracts or modifications which (i) offer subcontracting possibilities; (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to

include the clause in 7-104.14(a). However, the clause at 7-104.14(c) shall not be included in any solicitation which has been set aside for small business concerns or which requirement is to be procured through the Section 8(a) program.

(d) In determining whether subcontracting possibilities exist, the contracting officer should consider whether firms which are engaged in the business of performing the work or supplying the items to be required under a contract customarily contract with third parties for the specific purpose of performing a part of such work rather than maintaining sufficient in-house capability to perform the work. The existence of subcontracting possibilities may also be affected, but not necessarily negated, by circumstances such as a potential contractor's long-standing contractual relationship with its suppliers or product prequalification requirements for various supplies or components. In those situations where there is a determination that no subcontracting possibilities exist, such determination shall be approved by the chief of the contracting office and placed in the contract file.

(e) The Small Business Act encourages Federal agencies to provide incentives to increase subcontracting opportunities for small business and small disadvantaged business concerns as may be commensurate with the efficient and economical performance of the contract. Various approaches may be used in the development of incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria. In negotiated contracts for which a subcontract plan is required in accordance with 1-707.3(b), contracting officers may include provisions to effect these incentives. Such provisions should normally be negotiated subsequent to reaching agreement upon the subcontract plan. A sample incentive clause is contained in 7-104.14(d). The use of any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals established in the subcontracting plan must ensure that (i) the goals are realistic and (ii) that any monetary rewards for exceeding the goals must be commensurate with the contractor's efforts which would not otherwise have been expended (e.g., administrative reclassification by the SBA during performance or uneconomic and unnecessary subcontract decisions to take inappropriate advantage of the incentive).

(f) The small disadvantaged business concern representation in 7-2003.74 shall be included in all solicitations and all contracts which are awarded without reference to a

solicitation, other than those involving small purchase. Failure to execute the representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award.

1-707.4 *Reserved.*

1-707.5 *Reserved.*

1-707.6 *Reserved.*

7-707.7 *Reserved.*

1-708 *Women-Owned Business Concerns.*

(a) Executive Order 12138 created a National Women's Business Enterprise Policy and prescribed arrangements for developing, coordinating, and implementing a national program for women's business enterprises.

(b) To encourage the use of women-owned businesses in subcontracting, the clause in 7-104.52 shall be included in all contracts expected to exceed $10,000 except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; and (ii) contracts for services which are personal in nature.

GENERAL PROVISIONS

Part 8—Labor Surplus Area Concerns

1-800 Scope of Part. This Part sets forth Department of Defense policy and procedures with respect to aiding labor surplus areas in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This Part implements Defense Manpower Policy No. 4A, 27 Oct 1977 (32F CFR Part 134), and the Small Business Act as amended (15 USC 631), and U.S. Department of Labor Regs (29 CFR Part 654). Defense Manpower Policy No. 4A states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

1-801 Definitions.

1-801.1 *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors, on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

Example A. ABC Company, manufacturing in a labor surplus area, bids on a contract at $1,000. ABC Company will incur the following costs:

Direct labor $230
Overhead 275
Purchase of materials from RST Company, which manufactures the materials in a full employment area 425

ABC Company qualifies as a substantial labor surplus area concern since it will incur costs in a labor surplus area amounting to more than 50% of the contract price.

GENERAL PROVISIONS

1-906 Subcontractor Responsibility.

(a) To the extent that a prospective contractor proposes to perform the contract by subcontracting, determinations of prospective subcontractors' responsibility may be necessary in order to determine the responsibility of the prospective prime contractor. Determinations concerning prospective subcontractor's responsibility shall generally be a function performed by the prospective prime contractor. (But see 1-603(c) relating to subcontractors listed on the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors.) A prospective prime contractor may be required to (i) indicate, in writing, the responsibility of proposed subcontractors, or (ii) show evidence of an acceptable and effective purchasing and subcontracting system which encompasses a method for determining subcontractor capability.

(b) Notwithstanding the general responsibility of a prospective contractor to demonstrate the responsibility of his prospective subcontractors, it may be in the Government's best interest to make a direct determination of the responsibility of one or more prospective subcontractors prior to award of the prime contract. Examples of when this may be particularly suitable are the procurements of (i) medical items, (ii) supplies or services which are so urgently needed that it is necessary for the Government to go beyond the normal process in determining contractor responsibility, and (iii) supplies or services, a substantial portion of which will be subcontracted. The determination of responsibility of a proposed subcontractor by the Government shall be based on the same factors as are applicable in a determination of responsibility of a prospective prime contractor.

1-907 Disclosure of Pre-Award Data. Except as provided in 1-329, data including information obtained from a pre-award survey, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released outside the Government and shall not be made available for inspection by individuals, firms, or trade organizations (see 1-329.3(c)(5)). Such data may be disclosed to, or summarized for, other elements within the Government on their request, and shall be made available to Department of Defense procurement personnel upon request in accordance with 1-905.1. Prior to making a determination of responsibility, such data may be discussed with the prospective contractor as determined necessary by the purchasing office. After an award, the findings of the pre-award survey may be discussed by the contracting officer with the company surveyed as provided in 2-408 and 3-508, or if appropriate, by the head of the contract administration office or his designee.

GENERAL PROVISIONS

Part 10—Publicizing Procurement Actions

1-1001 General Policy. It is Department of Defense policy to increase competition by publicizing procurements which offer competitive opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in Defense procurement programs.

1-1002 Dissemination of Information Relating to Invitations for Bids and Requests for Proposals.

1-1002.1 *Availability of Invitations for Bids and Requests for Proposals at the Contracting Office.* A reasonable number of copies of invitations for bids and requests for proposals, which are required to be publicized in the *Commerce Business Daily*, including specifications and other pertinent information, shall be maintained at the contracting office. Upon request, prospective contractors not initially solicited may be mailed or otherwise provided copies of such invitations for bids or requests for proposals to the extent they are available. However, for any contract to be let by any department, it shall provide to any small business concern upon its request: (i) a copy of bid sets and specifications with respect to such contract; (ii) the name and telephone number of an employee of such department to answer questions with respect to such contract; and (iii) adequate citations to each major Federal law or departmental rule with which such business concern must comply in performing such contract. When a solicitation for proposals has been limited as a result of a determination that only a specified firm or firms possess the capability to meet the requirements of an acquisition, requests for proposals shall be mailed or otherwise provided upon request for firms not solicited, but only after advice has been given to the firm making the request as to the reasons for the limited solicitation and the unlikelihood of any other firm being able to qualify for a contract award under the circumstances; but see 4-106.2. In addition, to the extent that invitations for bids or requests for proposals are available, they shall be provided on a "first-come-first-served" basis, for pick up at the contracting office, to publishers, trade associations, contracting information services, and other members of the public having a legitimate interest therein (for construction, see 18-205(c)); otherwise the contracting office will make copies available to members of the public pursuant to Appendix L. In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally

(xxxii) the estimated magnitude of the proposed construction indicated by 18-109;

(xxxiii) special provisions relating to the Buy American Act (see Section XVIII, Part 5);

(xxxiv) statement of arrangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xxxv) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xxxvi) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any utilities are adequate for the needs of both the Government and the contractor. Such information shall specify any special conditions of use to be imposed on the contractor and shall also specify any utilities to be furnished without charge; utilities shall be furnished without charge when the contracting officer determines that this is advantageous to the Government, as when the administrative costs incident to maintaining records and collecting payments will approximate the cost of the utility services to be furnished. Such information may also include any applicable rates to be imposed under the Availability and Use of Utility Services clause (see 7-603.30);

(xxxvii) information concerning pre-bid conference;

(xxxviii) if it is necessary to advertise before receipt of a wage determination, a notice that the schedule of minimum wage rates to be paid under the contract will be published as an amendment to the specifications;

(xxxix) a provision as follows—

MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS

The right is reserved, as the interest of the Government may require, to revise or amend the specifications or drawings or both prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Invitation for Bids. If the revisions and amendments are of a nature which require material changes in quantities, or prices bid, or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer will enable bidders to revise their bids. In such cases, the amendment will include an announcement of the new date for opening bids.

(xl) a provision as follows—

GOVERNMENT'S PRIVILEGE IN MAKING AWARDS

The Government further reserves the right to make award of any or all schedules of any bid, unless the bidder qualifies such bid by specific limitation; also to make award to the bidder whose aggregate bid on any combination of bid schedules is low. For the purpose of this Invitation for Bids, the word "item" as used in paragraph 10(c) of Standard Form 22 shall be considered to mean "schedule".

(xli) if it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for a first or base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In such case, the invitation

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shall include a provision substantially as in 7-2003.28, and the low bidder and the bid items to be awarded shall be determined as therein provided. The contracting officer, prior to the opening of bids, shall determine and record in the contract file the amount of funds available for the project. The amount so recorded shall be controlling for determining the low bidder but may be increased for determining the bid items to be awarded to him *provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items;

(xlii) a statement on the face of the invitation as follows—

BIDS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS INVITATION FOR BIDS (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN BIDS IS PRESCRIBED IN 18 U.S.C. 1001.

(xliii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (this may be placed elsewhere so long as the notice is adjacent to the limitation as to option price);

(xliv) Reserved;

(xlv) if the contract is to contain the *Safety Precautions for Ammunition and Explosives* clause in 7-104.79, see 2-201(a)Sec.H(1x);

(xlvi) when Standard Form 19 is used, a statement that if the bid exceeds $10,000, the contract also will contain the clauses in—

7-103.10(a) (*Federal, State, and Local Taxes*),
7-103.18 (*Equal Opportunity*) unless exempted by 12-805,
7-104.14(a) (*Utilization of Small Business Concerns*), and
7-104.15 (*Examination of Records by Comptroller General*);

(xlvii) Reserved;

(xlviii) the *Late Bids* provision in 7-2002.2 (this replaces paragraphs 7 and 8 of SF 22);

(xlix) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(l) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(li) the *Clean Air and Water Certification* in 7-2003.71;

(lii) Reserved;

(liii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(liv) insert the Small Disadvantaged Business concern representation in 7-2003.74;

(lv) if the contract is for the procurement of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lvi) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(2) When the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(3) When the bidder furnishes evidence in support of an alleged mistake, the contracting officer shall refer the case to the appropriate authority, together with the following data:

(i) a signed copy of the bid involved;

(ii) a copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake;

(iii) an abstract or record of the bids received;

(iv) a written request by the bidder to withdraw, or modify the bid, together with the bidder's written statement and supporting evidence (such as work sheets, or other data used in preparing the bid) of the existence of the mistake and manner in which it occurred, and supporting evidence of the bid actually intended;

(v) a written statement by the contracting officer setting forth (A) a description of the supplies or services involved, (B) the expiration date of the bid in question and of the other bids submitted, (C) specific information as to how and when the mistake was alleged, (D) a summary of the evidence submitted by the bidder, (E) in the event only one bid was received, a quotation of the most recent contract price for the supplies involved, or, in the absence of a recent contract for the item, the contracting officer's estimate of a fair price for the item, and (F) any additional evidence considered pertinent. The statement shall recommend that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw the bid, or the bidder be authorized to modify the bid.

When time is of the essence because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the designated authority. Ordinarily, contracting officers will not refer mistake in bid cases by telegraph or telephone to the designated authority, when the determinations set forth in (a)(2) and (3) above are applicable, since actual examination is generally necessary to determine whether the evidence presented is clear and convincing.

(f) Nothing contained in this paragraph 2-406.3 prevents a Department from submitting doubtful cases to the Comptroller General for advance decision.

(g) A signed copy of the administrative determination authorizing withdrawal or modification of the bid made in accordance with (a) above shall accompany the appropriate finance center copy of the contract awarded. Each Department shall maintain records of all administrative determinations made in accordance with (a) above, together with a complete statement of the facts involved and the action taken in each case. Copies of all administrative determinations will be included in the contract file.

2-406.4 *Reserved.*

(next page is 2:36)

2-407 Award.

2-407.1 *General.* Unless all bids are rejected, award shall be made by the contracting officer, within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. If a proposed award requires approval of higher authority, such award shall not be made until approval has been obtained. Awards shall be made by mailing or otherwise furnishing to the bidder a properly executed award document (see Section XVI, Parts 1 and 4) or notice of award on such form as may be prescribed by the procuring activity. When a notice of award is issued, it shall be followed as soon as possible by the formal award. When more than one award results from any single invitation for bids, separate award documents shall be executed, each suitably numbered. When an award is made to a bidder for less than all the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on such additional items within the bidder's bid acceptance period. When two or more awards are made to a single bidder on an invitation, the copy of the successful bid marked "original" will be attached to the appropriate finance center copy and a copy marked "duplicate" will be attached to the retained office copy of the first award issued, and succeeding awards will be inscribed to indicate the number of the award to which the original and duplicate bids are attached. This is necessary for legal review and auditing by the General Accounting Office. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document, since the award is an acceptance of the bid, and the bid and the award constitute the contract.

2-407.2 *Responsible Bidder.* Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible (see Section I, Part 9).

2-407.3 *Discounts.*

(a) The Discounts clause of the Solicitation Instructions and Conditions (Standard Form 33-A) establishes 20 calendar days as the minimum period for prompt payment discounts to be considered in bid evaluation unless otherwise specified in the invitation for bids. Prior to issuing an invitation for bids (except for construction), a determination shall be made as to whether the 20 calendar day minimum period for prompt payment discounts is appropriate. If a minimum period more or less than 20 calendar days is determined to be desirable, such

(ii) such additional general provisions (contract clauses) as may be applicable to the contract;

(iii) such alterations in contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.

(i) Here list all of the documents, exhibits, and other attachments that make up the request for proposals or requests for quotations package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the request for proposals or request for quotations proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Offeror.

(i) when neither SF 18 nor SF 33 is used, the following shall be included in this Section K:

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check or complete all applicable boxes or blocks.)

(A) SMALL BUSINESS

He /__/ is, /__/ is not a small business concern. A small business concern for the purpose of Government contracting is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.) If the

offeror/quoter is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished /_/ will, /_/ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

(B) SMALL DISADVANTAGED BUSINESS CONCERN

(a) The offeror represents that he ( ) is, ( ) is not, a small business concern owned and controlled by socially and economically disadvantaged individuals. The term "small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern—

(1) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more such individuals.

(b) The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(C) REGULAR DEALER-MANUFACTURER (applicable only to supply contracts exceeding $10,000)

He is a /_/ regular dealer in, /_/ manufacturer of, the supplies offered.

(D) CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(Insert the provision in 7-2003.1 in accordance with 1-115(a).)

(ii) when a request for proposals form other than SF 33 is used, a requirement for stipulation of a time within which the Government may accept the proposal;

(iii) when SF 33 is not used, the Contingent Fee clause in 7-2002.1 (if required by 1-506.1) and the following:

(A) TYPE OF BUSINESS ORGANIZATION

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check all applicable boxes or blocks.)

He operates as /_/ an individual, /_/ a partnership, /_/ a nonprofit organization, /_/ a corporation, incorporated under the laws of the State of _____.

(xxviii) the provision in 7-2003.40;

(xxix) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1-318);

(xxx) such general contract provisions or conditions as are required by law or by this Regulation;

(xxxi) Reserved;

(xxxii) when the procurement involves a set-aside for small business concerns, the following provision will be placed on the face of the solicitation form or on a cover sheet:

THIS IS A .....% SET ASIDE FOR SMALL BUSINESS CONCERNS.

(xxxiii) a statement that prospective offerors may submit inquiries by writing or calling (collect calls not accepted) Mr. (insert name and address; telephone area code, number, and extension).

(xxxiv) Requests for Proposals which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xxxv) a statement requesting the prospective offeror to list the names and telephone numbers of persons authorized to conduct negotiations,

(xxxvi) if the contract is pursuant to the Balance of Payments Program, the procedures in 6-804 are applicable;

(xxxvii) in accordance with 6-1104, the provision in 7-2003.62;

(xxxviii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause—

(A) on the face page or cover sheet of the solicitation, these notices:

I. NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION

II. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (1975 OCT)

(B) the applicable provisions in 7-2003.14(b), (c), and (d);

(xxxix) the applicable small business size standard (see 1-701 and 1-703);

(xl) *Reserved*;

number of suppliers have been selected for additional discussion (see 3-805), the contracting officer, upon determination that a proposal is unacceptable, shall provide prompt notice of that fact to the source submitting the proposal. Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to 3-508.3 below would suffice. In addition to stating that the proposal has been determined unacceptable, notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise that, since further negotiation with him concerning this procurement is not contemplated, a revision of his proposal will not be considered.

(b) In any procurement involving a small business set-aside to be placed through conventional negotiation, upon final completion of negotiations and determinations of responsibility but prior to award, the contracting officer shall inform each unsuccessful offeror by written notice of the name and location of the apparently successful offeror(s). Each apparently unsuccessful offeror should be advised that any subsequent revisions of his proposal will not be considered, since no further negotiations are contemplated, and no further contact with the contracting officer need be made regarding the instant procurement unless the unsuccessful offeror has grounds to challenge the small business size status of the apparently successful offeror(s). This notification procedure shall not apply to procurements exempt by 3-508.1 above or to any urgent procurement action which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

3-508.3 *Post-Award Notice to Offerors.*

(a) Promptly after making all awards in any procurement in excess of $10,000, the contracting officer shall give written notice to the unsuccessful offerors that their proposals were not accepted, except that such notice need not be given where notice has been provided pursuant to 3-508.2(a). Such notice shall include:

(i) the number of prospective contractors solicited;

(ii) the number of proposals received;

(iii) the name and address of each offeror receiving an award;

(iv) the items, quantities, and unit prices of each award; *provided* that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished; and

(v) in general terms, the reasons why the offeror's proposal was not accepted, except where the price information in (iv) above readily reveals such reason, but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(b) In procurements of $10,000 or less and subject to the exceptions in 3-508.1 above, the information described in (a) above shall be furnished to unsuccessful offerors upon request.

(c) Such information as is authorized to be released to unsuccessful offerors pursuant to (a)(i) through (iv) above may, upon his request, be provided to the successful offeror.

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3-508.4 *Debriefing of Unsuccessful Offerors.*

(a) Offerors under negotiated procurements generally expend substantial time and effort in preparing their proposals. Therefore, those offerors not selected for contract award have a significant interest in learning why they were unsuccessful. Debriefing is the process by which purchasing offices provide unsuccessful offerors with the Government's evaluation of the significant factors contained in their proposals, citing determinative deficiencies and weaknesses. An adequate debriefing can provide the basis upon which offerors may improve future proposals and, in addition, give assurance that the selection has been handled fairly, in accordance with applicable regulations and the provisions of the solicitation.

(b) When a contract is awarded on some basis other than price, unsuccessful offerors shall be debriefed upon their written request, and furnished the basis for the selection decision and contract award. Debriefings shall be provided at the earliest feasible time after contract award. They shall be conducted by purchasing office officials familiar with the rationale for the selection decision and contract award.

(c) It is essential that debriefings be conducted in a scrupulously fair, objective and impartial manner. Debriefing information given offerors shall be factual and consistent with the evaluation. While offerors should be informed of the areas in which their technical or management proposals were weak or deficient, point-by-point comparisons with the technical or management proposals of the other offerors shall not be made. Furthermore, debriefings shall not reveal: (i) trade secrets; (ii) privileged or confidential manufacturing processes and techniques; (iii) commercial and financial information which is privileged or confidential, including cost breakdowns, profit, overhead rates, and similar information; or (iv) the relative merits or technical standing of competitors or the evaluation scoring.

(d) A summary of the debriefing shall be made a part of the contract file.

3-508.5 *Classified Information.* Classified information shall be furnished only in accordance with regulations governing classified information.

3-509 Protests Against Award. Protests against awards of negotiated procurements shall be treated substantially in accordance with 2-407.8.

3-510 Reserved.

Part 6—Small Purchase and Other Simplified Purchase Procedures

3-600 Scope of Part. This Part sets forth simplified procedures for the procurement of supplies, nonpersonal services, and construction, the aggregate amount of which does not exceed $10,000, which are referred to in this Part as "small purchases." It also applies to certain other supplies and services. This Part does not preclude the use of bilateral purchase orders (see 3-608.4); Standard Form 19 for construction contracts (see 16-402.2 and 18-302); or a negotiated two-party formal contract for procurements not in excess of $10,000, for example where the procurement is classified or requires specific contract provision relating to technical inspection or test, specification changes, Government-furnished property, insurance, patents, price adjustments, or the like. When the total cost of services to repair Government equipment does not exceed $10,000, such services may be obtained by purchase orders or other appropriate small purchase method, regardless of the value of the Government equipment being repaired (see 3-608.2(b)(1)(viii)), except as provided in 3-608.2(b)(2). Procurements of supplies and services or construction initially estimated to exceed $10,000 shall not be made by the small purchase method, even though resulting awards do not exceed such amounts.

3-601 Purpose. The objective of the simplified purchase methods prescribed herein is to reduce administrative costs.

3-602 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) *Bulk funding concept* means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

(b) *Mail indicia* means the official printed markings substituted for stamps, *i.e.*, "Postage and Fees Paid" and appropriate department. This includes such markings on envelopes, cards, labels, wrappers, or tags.

(c) *Local delivery* means the movement of supplies or commodities wholly within a recognized metropolitan area in which both the point of pickup and the point of delivery are located.

3-603 Policy.

3-603.1 *General.*

(a) All purchases covered by this Part shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with Part 2 of this Section. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with Section V. The contracting officer shall use the purchase method covered by this Part which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source.

(b) Requirements aggregating more than $10,000 shall not be broken down into several purchases which are less than $10,000 merely for the purpose of per-

mitting negotiation under the small purchase procedures authorized by this Part. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(c) The "bulk funding" concept shall be used to the maximum extent practicable to reduce processing delays, double handling, and documentation. Bulk funding is particularly appropriate when numerous purchases using the same type of funds are to be made during a given period.

(d) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(i) supplier delivery;
(ii) common carrier;
(iii) parcel post; and
(iv) mail indicia.

(e) Inspection procedures for small purchases shall be in accordance with 14-308.

(f) The use of United States-owned foreign currency in making payments for small purchases shall be in accordance with Section VI, Part 11.

(g) Each acquisition of supplies and services which has an anticipated value not in excess of $10,000 and which is subject to the small purchase procedures set forth in this part is a small business-small purchase set-aside (1-702(c)) unless the contracting officer (i) determines there is no reasonable expectation of obtaining two or more quotations for purchases in excess of $500 or at least one quotation for purchases not in excess of $500; or (ii) is unable to obtain quotations that are, in either case, competitive with market prices in the industry and competitive in terms of quality and delivery as outlined in 3-604. In the event that the small business-small purchase set-aside is dissolved in accordance with (g)(ii), new quotes shall be solicited on an unrestricted basis. In automated contracting systems, all proposed acquisitions pursuant to small purchase procedures will be screened for reservation in accordance with the criteria in this paragraph. When source lists are maintained for acquisitions not exceeding $10,000, these source lists shall include all known small business concerns. The names of such concerns shall be obtained from the activity Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns.

3-604 Competition and Price Reasonableness.

3-604.1 *Purchases Not in Excess of $500.* Small purchases not exceeding $500 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchases not in excess of $500 may more than offset potential savings in detecting instances of overpricing; therefore, action to verify the reasonableness of the price need be taken only when the buyer or contracting officer suspects that, or has information to indicate that, the price may not be reasonable, *e.g.*, comparison to previous price paid, personal knowledge of the item involved.

3-604.2 *Purchases in Excess of $500.*

(a) Solicitation of quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be limited to three suppliers and, to the maximum extent possible, shall be restricted to the local trade area of either the purchasing or the receiving activity. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. Quotations should generally be solicited orally except for construction contracts in excess of $2,000. Written solicitations should be used when (i) the suppliers are located outside the local area, (ii) special specifications are involved, (iii) a large number of line items are included in a single proposed procurement, or (iv) obtaining oral quotations is not considered economical or possible.

(b) Reasonableness of a proposed price should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file setting forth the basis of the determination of fair and reasonable price. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being procured, or any other means. Written records of solicitation may be limited to notes or abstracts to show vendor or vendors contacted, prices, delivery, and any other informal historical data. If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used (see 16-813). If this form is not used, the price reasonableness statement shall be based on one or more of the criteria set forth on the form. In any case, the con-

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tracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased. When only one source is solicited, an additional notation must be made to explain the absence of competition, except for procurement of utility services available only from one source or of educational services from nonprofit institutions. Notification to unsuccessful suppliers shall be given only if requested.

(c) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity, which either unreasonably exceeds stated quantity requirements, or results in an unreasonable price for the quantities required. If practicable before placing the order the requiring activity should be informed in such cases of all facts regarding the quotation and requested to confirm or alter its requirement for the item or items under consideration. The file shall be documented to support the final action taken.

3-605 Blanket Purchase Agreement (BPA).

3-605.1 *General.* A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply (see 12-302, 12-602.1 and 12-1001). Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

3-605.2 *Limitation on Use.* A blanket purchase agreement may not be used when a call exceeds $5,000 except that BPA calls up to $10,000 may be placed by Inventory Control Points and calls for subsistence items are unlimited as to dollar value. The *Examination of Records by Comptroller General* clause in 7-104.15 and the *Listing of Employment Openings* clause in 7-103.27 shall be included in agreements for subsistence items which do not limit the dollar value of individual calls to less than $10,000.

3-605.3 *Establishment of Blanket Purchase Agreements*

(a) *Alternate Sources.* To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under such agreements.

(b) *Form.*

(1) Except as provided in (2) below, blanket purchase agreements shall be prepared and issued on DD Form 1155 (Order for Supplies or Services/Request for Quotations). Either the "General Provisions," DD Form 1155r, or the "Reverse of Order for Supplies or Services/Request for Quotations—Foreign," DD Form 1155r-1, as applicable, shall be used. Other applicable provisions of the blanket purchase agreement shall be set forth on the Standard Form 36 (Continuation Sheet) or on a blank sheet of paper, including the following:

(i) the Contract Work Hours and Safety Standards Act—Overtime Compensation clause in 7-103.16(a) shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(ii) where the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, as amended, the clause in 7-1903.41(a) or (b) shall be substituted for Clause 16 of the General Provisions and the procedures in 12-1005 complied with, unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(iii) where the agreement is for the intended purchase of supplies, the Walsh-Healey Public Contracts Act clause in 7-103.17 shall be added, unless the agreement limits the aggregate total of orders to be placed thereunder to $10,000; and

(iv) where the agreement is for the intended purchase of supplies, the applicable equal opportunity clause in 7-103.18 shall be added.

(2) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence."

(c) *Numbering.* Enter the Procurement Instrument Identification (PII) number as prescribed in Section XX, Part 2.

(d) *Accounting Data.* Blanket purchase agreements need not cite any accounting data so that purchases utilizing different appropriation data may be made under the same agreement.

(e) *Negotiation Authority.* The Schedule of each agreement shall be annotated as follows

> The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), or 10 U.S.C 2304(a)(17)

If for the purchase of subsistence.

> The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), 10 U.S.C 2304(a)(9), or 10 U.S.C 2304(a)(17)

This annotation shall not be duplicated on forms used to document individual calls, although the specific authority for the call may be cited therein.

thresholds, he will be required to follow consistently the disclosed practices for those contracts awarded during a period in which he was obligated to submit a Disclosure Statement(s). A change to such practices may be proposed by either the contractor or the Government and negotiated by the contractor and his CAS cognizant ACO.

3-1204 Contract Clauses.

3-1204.1 Prime Contracts and Solicitations.

(a) The clauses in 7-104.83(a)(1) and (b) shall be inserted in all negotiated solicitations and contracts exceeding $100,000, except the following:

(i) when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulations. Catalog or market price exemption is determined to exist even though the award is made on the basis of adequate competition. It is the offeror's responsibility to request and to provide justification for a catalog or market price exemption. In providing such justification, the offeror shall (A) indicate in his proposal, and in any changes in his offered price, that the proposed price is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, rather than derived from the stimulus of competition which may be present in the particular procurement; and (B) complete and submit a DD Form 633-7 or otherwise furnish the necessary information in accordance with 3-807.7(b) However, the procuring activity must make a determination whether or not the exemption applies in each case;

(ii) contracts awarded to an offeror who has certified he is a small business concern pursuant to 1-702(d);

(iii) contracts awarded to an educational institution subject to cost principles in Section XV, Part 3, except for contracts to be performed by a federally funded research and development center operated by such an institution;

(iv) contracts with contractors who are eligible for and have elected to use modified contract coverage under Part 332 of Appendix O (see (b) below);

(v) contracts which are executed and performed in their entirety outside the United States, its territories and possessions;

(vi) contracts with a foreign government or an agency or instrumentality of such government; and

(vii) contracts for which the Cost Accounting Standards Board has approved other waivers of exemptions pursuant to 331.30 of Appendix O.

(A) The Cost Accounting Standards Board has provided for the exemption of contracts of $500,000 or less under certain circumstances. Paragraph 331.30(b)(8) of Appendix O prescribes the circumstances under which such an exemption is applicable. In order to effectively administer the requirements of that paragraph, the solicitation notice 7-2003.67(b) shall be inserted in all solicitations requiring the inclusion of the solicitation notice in 7-2003.67(a).

(B) Contracts and subcontracts with foreign concerns are exempt from the requirements of Cost Accounting Standard 403 and all subsequent standards. This exemption does not relieve foreign concerns of any obligation to comply with CAS 401, CAS 402 or disclosure requirements.

(b) With respect to (a)(iv) and vii) above, the clauses in 7-104.83(a)(2) and (b) shall be inserted in--

(i) all negotiated solicitations which are likely to result in a negotiated contract exceeding $100,000, unless otherwise exempt in accordance with 3-1204.1 (a),

(ii) all such contracts with a foreign concern, and

(iii) all such contracts exceeding $100,000 but under $10,000,000 when the offeror certifies he is eligible for and elects to use modified contract coverage under provisions of Part 332 of Appendix O (see (a)(iv) above).

In order to effectively administer the exemption in (iii) above, the solicitation notice in 7-2003.67(c) shall be inserted in all solicitations requring the inclusion of the solicitation notice in 7-2003.67(a).

(c) When a contract contains the Administration of Cost Accounting Standards clause (7-104.83(b)), there is a requirement that a flow of information relative to CAS-covered subcontract(s) awarded under a CAS-covered prime contract be transmitted from the contractor placing the CAS-covered subcontract, at whatever tier, to his Cost Accounting Standards cognizant ACO and, subsequently, through Government channels, to the ACO cognizant of the subcontractor receiving the order. When the ACO is advised by the contractor of such an award, he will forward, within 10 days, the information required of the contractor in 7-104.83(b)(e) to the contract administration office (CAO) having Cost Accounting Standards cognizance. (See 3-1208.)

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within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services, *provided*, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated, and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

(End of clause)

7-103.12 *Disputes.*

(a) The following clause shall be included in all contracts subject to the Contract Disputes Act unless exempted by the Secretary pursuant to 41 U.S.C. 602(c).

DISPUTES (1980 JUNE)

(a) This contract is subject to the Contract Disputes Act of 1978 (P.L. 95-563).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

(c) (1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this contract. However, a written demand by the Contractor seeking the payment of money in excess of $50,000 is not a claim until certified in accordance with (d) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim pursuant to the Act by complying with the submission and certification requirements of this clause.

(3) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.

(d) For contractor claims of more than $50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request.

For contractor-certified claims in excess of $50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) Interest on the amount found due on a contractor claim shall be paid from the date the Contracting Officer receives the claim, or from the date payment otherwise would be due, if such date is later, until the date of payment.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

(b) The following paragraph shall be substituted for paragraph (h) of the clause in (a) above as required under the circumstances described in 1-314(k)(2) and (3).

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or related to the contract, and comply with any decision of the Contracting Officer. (1980 JUNE)

7-103.13 *Reserved.*

(next page is 7:17)

UTILIZATION OF SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (1980 AUG)

(a) It is the policy of the United States that small business and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals," hereafter referred to as disadvantaged business, shall mean a small business concern -

(1) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos,

Cambodia, and Taiwan, and other minorities, or any individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of clause)

(b) In accordance with 1-707.3(b), insert the following clause in negotiated contracts.

SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (NEGOTIATED) (1980 AUG)

(a) This provision does not apply to small business concerns.

(b) The apparent successful offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns and which shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the contracting officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract. As a minimum, the subcontracting plan shall include—

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. For the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business concerns.

e. A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the offeror who will administer the subcontracting plan of the offeror and a description of the duties of such individual;

(3) A description of the efforts the offeror will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States and will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 or, in the case of a contract for the construction of any public facility, $1 million, to adopt a plan in consonance with this clause;

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent

of compliance by the offeror with the subcontracting plan; and

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc.; and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel regarding the support of small and small disadvantaged business firms.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit DD Form 1140-1 in accordance with instructions provided on the form.

(e) The offeror understands that:

(1) An acceptable plan must, in the determination of the contracting officer, provide the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the contract.

(2) The Contracting Officer shall notify the Contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the Contractor sufficient time to modify the plan within the time limits prescribed.

(3) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(4) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business and Small Disadvantaged Business

Concerns or (ii) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.

(f) In the acquisition of commercial products, the offeror further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's commercial production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of clause)

(c) In accordance with 1-707.3(c), insert the following clause in formally advertised contracts.

SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FORMALLY ADVERTISED) (1980 AUG)

(a) This provision does not apply to small business concerns.

(b) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a material part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract. As a minimum, the subcontracting plan shall include:

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; for the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred

with (i) small business, and (ii) small disadvantaged business subcontractors shall be explained.

e. A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the bidder who will administer the subcontracting plan of the bidder and a description of the duties of such individual;

(3) A description of the efforts the bidder will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the bidder will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States, and that the bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1 million in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan in consonance with this clause;

(5) Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

(6) A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses or small disadvantaged businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc., and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan, the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding the requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of these programs through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel in support of these programs.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation

by such concerns. Where the Contractor's lists of potential small business and disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit DD Form 1140-1 in accordance with instructions provided on the form.

(e) The bidder understands that:

(1) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the bidder for award of the contract.

(2) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, or (ii) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

(f) In the acquisition of commercial products, the bidder further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the contracting officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of clause)

(d) The following clause is an example for use in negotiated contracts in accordance with 1-707.3(e).

INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (1979 JULY)

(1) The contractor has established, in his subcontracting plan, the following goals for awards to small business and small disadvantaged business concerns:

(i) _____ percent of the total planned subcontract amount of $ _____ to small business concerns, and

(ii) _____ percent of the total planned subcontract amount of $ _____ to small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) In recognition of any extraordinary efforts by the contractor in exceeding the small business and small dis-

advantaged business concerns subcontracting goals established by (1) above, the contracting officer may, at his election and in his sole discretion, pay an award fee to the contractor of not to exceed __*__ of the total dollar value of all such subcontract awards in excess of each goal in (1) above. The contracting officer may determine that such excess was not due to efforts by the contractor, i.e., subcontractor cost overruns, or where the actual subcontract amount exceeds that estimated in the subcontract plan; or there were planned subcontracts not disclosed in the subcontract plan during contract negotiation. Determinations under this paragraph shall not be subject to the clause hereof entitled Disputes.

(3) If the contract is a cost-plus-fixed-fee type, the total of the fixed fee and the incentive payments made pursuant to this clause is subject to the limitations set forth in DAR 3-405.6(c)(2).

*Exact percentage (not to exceed 10 percent) to be inserted into the contract document.

(End of Clause)

7-104.15 *Examination of Records by Comptroller General.* Insert the following clause in all contracts except contracts for public utility services at rates not in excess of those established for uniform applicability to the general public, or at such rates plus reasonable connection charges incident to such services, or unless exempted under 6-704 or 6-1001.

EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (1975 JUN)

(a) This clause is applicable if the amount of this contract exceeds $10,000 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $10,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above for records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

(End of clause)

subtracted from what would otherwise be considered the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

7-104.48 *New Material.* In accordance with 1-1208, insert the following clause.

NEW MATERIAL (1965 JAN)

Except as to any supplies and components which the Specification or Schedule specifically provides need not be new, the Contractor represents that the supplies and components including any former Government property identified pursuant to the "Government Surplus" clause of this contract to be provided under this contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this contract, the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, he shall notify the Contracting Officer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to the Government if authorization to use such supplies is granted.

(End of clause)

7-104.49 *Government Surplus.* In accordance with 1-1208, insert the following clause.

GOVERNMENT SURPLUS (1965 JAN)

(a) In the event the bid or proposal is based on furnishing items or components which are former Government surplus property or residual inventory resulting from terminated Government contracts, a complete description of the items or components, quantity to be used, name of Government agency from which acquired, and date of acquisition shall be set forth on a separate sheet to be attached to bid or proposal. Notwithstanding any information provided in accordance with this provision, items furnished by the Contractor must comply in all respects with the specifications contained herein.

(b) Except as disclosed by the Contractor in (a) above, no property of the type described herein shall be furnished under this contract unless approved in writing by the Contracting Officer.

(End of clause)

7-104.50 *Management Systems.* In accordance with 1-331(e), insert the following clause.

MANAGEMENT SYSTEMS REQUIREMENTS (1971 NOV)

The Contractor shall utilize the management systems listed on the DD Form 1660, Management Systems Summary List, attached hereto and made a part hereof. Compliance with this clause shall not relieve the Contractor from complying with any other provision of this contract.

(End of clause)

7-104.51 *Production Progress Report.* In accordance with 25-202, insert the following clause.

PRODUCTION PROGRESS REPORTS (1971 APR)

(a) The Contractor shall prepare and submit to the Contracting Officer Production Progress Reports in accordance with the instructions set forth elsewhere in this contract.

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(b) During any delay in furnishing a Production Progress Report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding $10,000 or 5% of the amount of this contract, whichever is less.

(End of clause)

7-104.52 *Utilization of Women-Owned Business Concerns (Over $10,000).* In accordance with 1-708(b), insert the following clause.

UTILIZATION OF WOMEN-OWNED BUSINESS CONCERNS (OVER $10,000) (1980 AUG)

(a) It is the policy of the United States Government that women-owned businesses shall have the maximum practicable opportunity to participate in the performance of contracts awarded by any Federal agency.

(b) The Contractor agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "women-owned business" concern means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business and that is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as women-owned business concerns.

(End of clause)

7-104.53 *Reserved.*
7-104.54 *Reserved.*

7-104.55 *First Article Approval.*

(a) In accordance with 1-1903, insert the following clause when the contractor is responsible for conducting first article approval test:

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (1969 SEP)

(a) The first article is ..... unit(s) of Lot/Item ..... which shall be tested in accordance with the provisions contained or referenced in this contract. At least ..... (—) calendar days prior to the beginning of first article approval tests, the Contractor shall furnish written notice to the Contracting Officer of the time and location of the testing so that the Government may witness such testing if it so elects.

(b) Within ..... (—) calendar days from the date of this contract, the first article approval test report shall be forwarded to ..... (Set forth address of office to receive the report.) marked "FIRST ARTICLE. Contract No ....., Lot/Item No. ....." The Contracting Officer shall, by written notice to the Contractor within ..... (—) calendar days after receipt of such test report by the Government, approve, conditionally approve, or disapprove such first article. The notice of approval or conditional approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons therefor.

(c) If the first article is disapproved by the Government, the Contractor may be required, at the option of the Government, to repeat any or all of the first article approval tests. After each notification by the Government of the requirement for additional tests, the Contractor shall at no additional cost to the Government make any necessary changes, modifications, or repairs to the first article or select another first article for testing. Thereafter, the Contractor shall perform the required additional approval tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time limit specified in (b) above. All costs related to additional approval tests shall be borne by the Contractor. The Government reserves the right to require an equitable reduction of contract price for any extension of the delivery schedule or for any additional costs to the Government related to additional approval tests.

(d) If the Contractor fails to deliver any first article approval test report within the time or times specified, or if the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract, and this contract shall be subject to termination for default: *provided*, that failure of the Government in such an event to terminate this contract for default shall not relieve the Contractor of his responsibility to meet the delivery schedule for production quantities.

(e) Where the approved first article is not consumed or destroyed in testing, and unless otherwise provided in this contract, the first article may be delivered as part of the contract quantity if it meets all terms and conditions of the contract for acceptance.

(f) In the event the Contracting Officer does not approve, conditionally approve, or disapprove the first article within the time specified in (b) or (c) above, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided in the "Changes" clause. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

NOTICE OF RADIOACTIVE MATERIALS (1974 APR)

(a) The Contractor shall notify the Contracting Officer or his designee, in writing (—*—) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, and set forth in Title 10 CFR, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the radioactivity per gram is greater than 0.002 microcuries. Such notice shall specify the part or parts of the items which contain such radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (BOB No. 38-R027)

(b) All items, parts or subassemblies which contain radioactive materials in which the radioactivity per gram is greater than 0.002 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD-1458 in effect on the date of the contract.

(End of clause)

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that appropriate licenses are obtained or safeguards are taken when licenses are not required.

7-104.81 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* The following clause may be inserted in contracts which involve or are in connection with the manufacture, modification, overhaul or repair of aircraft, missiles, or space launch vehicles.

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (1969 JAN)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled under or in connection with this contract.

(b) If the Government elects to conduct an investigation of the accident, the Contractor will cooperate fully and assist the Government's personnel until the investigation is completed.

(c) The Contractor will include a clause in each of his applicable subcontracts to require subcontractor cooperation and assistance in accident investigation under this clause.

(End of clause)

7-104.82 *Reserved.*

7-104.83 *Cost Accounting Standards.*

(a)(1) Insert the following clause in all solicitations which are likely to result in a negotiated contract exceeding $100,000, and in all contracts exceeding $100,000, unless exempt in accordance with 3-1204.1(a).

COST ACCOUNTING STANDARDS (1978 MAY)

(a) Unless the Cost Accounting Standards Board has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Public Law 91-379, August 15, 1970), the contractor, in connection with this contract shall:

(1) By submission of a Disclosure Statement, disclose in writing his cost accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosures must be made prior to contract award unless the Contracting Officer provides a written notice to the Contractor authorizing post-award submission in accordance with regulations of the Cost Accounting Standards Board. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain this Cost Accounting Standards clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside the Government.

(2) Follow consistently the cost accounting practices disclosed pursuant to (1) above in accumulating and reporting contract performance cost data concerning this contract. If any change in disclosed practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards Board requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.

(7) when incentives are used, the memorandum of negotiation shall contain an explanation of the incentive fee/profit plan identifying each critical performance element, management decisions used to quantify each incentive element, reasons for incentives on particular performance characteristics, and a brief summary of trade-off possibilities considered as to cost, performance, and time; and

(8) the subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) Neither consent by the Contracting Officer to any subcontract or any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination; (i) of the acceptability of any subcontract terms or condition, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this contract; unless such approval or consent specifically provides otherwise.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) and (ii) of (a) above without the consent of the Contracting Officer if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of the approval. (This subparagraph (g) however, shall not be applicable to those subcontracts subject to subparagraph (k) below, if any.)

(h) The Contractor shall (i) insert in each incentive price revision or price redetermination subcontract hereunder the substance of the "Limitation on Payments" paragraph set forth in the appropriate clause prescribed by paragraph 7-108 or 7-109 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(j) The Government reserves the right to perform contractor procurement system reviews as set forth in DAR section XXIII.

(End of clause)

(b) Insert the following additional subparagraph to the clause in (a) above in accordance with 23-201.2(d).

(k) Notwithstanding approval of the Contractor's procurement system, the Contractor shall not enter into certain subcontracts or classes of subcontracts set forth elsewhere in this contract without the prior written consent of the Contracting Officer. With respect to subcontracts so identified, the advance notification requirements of paragraph (a) above shall be fully applicable even though the Contractor's procurement system has been approved and those subcontracts are within the scope of the approval.

(c) In contracts with educational institutions, change "(iii)" in paragraph (a) of the clause in (a) above to read:

(iii) provides for the fabrication, purchase, rental, installation, or other acquisition of equipment or of industrial facilities.(1975 OCT)

(d) In accordance with 23-201.4, insert the Equal Opportunity Pre-Award Clearance of Subcontracts clause in 7-104.22.

7-203.9 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-203.10 *Termination.* In accordance with 8-702(a), insert the following clause:

TERMINATION (1973 APR)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part

(1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

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LIMITATION OF LIABILITY - MAJOR ITEMS (1979 MAR)

(a) Except as provided below and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business; or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government under this contract, the Contractor shall be liable to the Government for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies to the extent of such insurance or reserve for self-insurance.

(d) This clause does not diminish the Contractor's obligation, to the extent otherwise arising under this contract, relating to correction, repair, replacement or other relief for any defect or deficiency in supplies delivered under this contract.

(e) The provisions of this clause shall not limit or otherwise affect the Government's rights pursuant to the following listed clauses, if included in this contract

GROUND AND FLIGHT RISKS,
AIRCRAFT FLIGHT RISK,
GOVERNMENT PROPERTY, and
WARRANTY OF TECHNICAL DATA.

(f) In all subcontracts hereunder, except those covered by (g) below, the Contractor shall either

(i) insert, with the advance written consent of the Contracting Officer, the substance of this clause including this paragraph (f) suitably altered to reflect the relationship of the contracting parties; or

(ii) insert the substance of the clause in 7-104.45(a), suitably altered to reflect the relationship of the contracting parties

(g) In subcontracts for both major items for which this clause is appropriate, and other end items for which the clause in 7-104.45(a) is appropriate, the substance of both clauses shall be included, with the advance written consent of the Contracting Officer. The Contractor shall identify high unit cost items by line item and include the following preamble to this clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

(End of clause)

(b) In contracts for the purchase of both major items (see 1-330) for which the clause in (a) above is appropriate, and other contract end items for which the clause in 7-104.45(a) is appropriate, both clauses shall be included. The Contracting Officer shall identify high unit cost items by line item and include the following preamble to the Limitation of Liability - Major Items clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

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7-204.34 *Multi-Year Procurement.* In accordance with 1-322.5, insert the clauses in 7-104.47.

7-204.35 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-204.36 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-204.37 *Reserved.*

7-204.38 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-204.39 *First Article Approval.*

(a) In accordance with 1-1904, insert the clause in 7-104.55(a) with appropriate modifications.

(b) In accordance with 1-1904, insert the clause in 7-104.55(b) with appropriate modifications.

7-204.40 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-204.41 *United States Products and Services (Balance of Payments Programs).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-204.42 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-204.43 *Reserved.*

7-204.44 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62 except in negotiated subsistence procurements and contracts for tanker/barge shipments of bulk petroleum products.

7-204.45 *Recovery of Nonrecurring Costs on Foreign Sales of Major Defense Equipment.* Insert the clause in 7-104.64, as appropriate.

7-204.46 *Use of Excess and Near-Excess Currency.* In accordance with the requirements of 6-1110, insert the clause in 7-104.66.

7-204.47 *Production Progress Report.* In accordance with the requirements of 25-202, insert the clause in 7-104.51.

7-204.48 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-204.49 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-204.50 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-204.51 *Procurement of Precision Components for Mechanical Time Devices.* In accordance with 1-2207.4, insert the clause in 7-104.46.

7-204.52 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-204.53 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-204.54 *Contractor's Identification of Changes.* In accordance with 26-802, insert a clause as provided in 7-104.86.

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Part 3—Fixed-Price Research and Development Contracts

7-301 Applicability. As used throughout this Part, the term "fixed-price research and development contract" means any contract (other than a letter contract, a notice of award, or a modification not affecting new procurement) which (i) is entered into at a fixed price in an amount exceeding $2,500 (with or without any provision for price redetermination, economic price adjustment, or other form of price revision as covered in 3-404), and (ii) is for experimental, developmental, or research work. See 3-402(b) for use of types of contracts for research and development work.

7-302 Required Clauses. The following clauses shall be inserted, as required, in all fixed-price research and development contracts, except as may otherwise be indicated in this Part.

7-302.1 *Definitions.* Insert the contract clause in 7-103.1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this Regulation.

7-302.2 *Payments.*

PAYMENTS (1959 JUN)

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

7-302.3 *Standards of Work.*

STANDARDS OF WORK (1959 JUN)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

(End of clause)

7-302.4 *Inspection.*

(a) The following clause shall be used where the primary contract objective is delivery of end items other than designs, drawings, or reports, except where the contracting officer determines that the use of such clause is impracticable. Where this clause, or this clause as modified in (c) below, is not used, the clause in (b) below shall be used.

INSPECTION (1976 JUL)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work within the delivery schedule or such later time as the Contracting Officer may authorize, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

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(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

(End of clause)

(b) The following clause shall be inserted in all contracts subject to this Part where the clause in (a) above is not used.

INSPECTION (1959 JUN)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(End of clause)

(c) When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), the clause in (a) above shall be included in the contract, except that the following shall be added as the second sentence of paragraph (e).

The inspection system shall be in accordance with the edition of Military Specifications MIL-I-45208 in effect on the date of this contract. (1967 AUG)

7-302.5 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-302.6 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-302.7 *Federal, State, and Local Taxes.* In accordance with 11-401, insert the appropriate clause in 7-103.10.

7-302.8 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-303.29 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-303.30 *United States Products (Military Assistance Program).* In accordance with 6-703.4, insert the clause in 7-2003.51.

7-303.31 *Value Engineering.* Subject to the limitations in 1-1702, insert the appropriate clause(s) in 7-104.44 as applicable.

7-303.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-303.33 *Non-Use of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade.* In accordance with 1-1404 and 1-1410, insert the appropriate clause in 7-104.19.

7-303.34 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-303.35 *Limitation of Liability.* In accordance with 1-330(b), insert the appropriate clause in 7-104.45.

7-303.36 *Bills of Lading Covering Shipments From Contractor's Plant.* In accordance with the requirements of 19-217.1(a), insert the clause in 7-103.25.

7-303.37 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-303.38 *Contract Schedule Subline Items Not Separately Priced.* In accordance with 20-304.2(c)(ii), insert the clause in 7-104.7.

7-303.39 *First Article Approval.* In accordance with 1-1904, insert the appropriate clause in 7-104.55.

7-303.40 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-303.41 *United States Products and Services (Balance of Payments Program.)* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-303.42 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-303.43 *Reserved.*

7-303.44 *Care of Laboratory Animals.* In compliance with law and in furtherance of the Department of Defense policy that all aspects of investigative programs involving the use of experimental or laboratory animals be humanely conducted in accordance with recognized principles, the following clause shall be included in all contracts awarded in the United States, its possessions, and Puerto Rico, which may involve the use of such animals.

CARE OF LABORATORY ANIMALS (1974 APR)

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, P.L. 89-544, Laboratory Animal Welfare Act, 24 August 1966 as amended by P.L. 91-579, Animal Welfare Act of 1970, 24 December 1970. The Contractor shall furnish evidence of such registration to the contracting officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a) above.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences—National Research Council, and in the United States Department of Agriculture's regulations and standards issued under the Public Laws enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. Contractor reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, NAS-NRC, and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of 24 August 1966, as amended (P.L. 89-544 and P.L. 91-579).

NOTE: The Contractor may request registration of his facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland, 20782.

(End of clause)

7-303.45 *Recovery of Nonrecurring Costs on Non-US Government Sales of Defense Equipment.* In accordance with 4-110(d), insert the clauses in 7-104.64, as appropriate.

7-303.46 *Insurance.* In accordance with 10-405, insert the clause in 7-104.65.

7-303.47 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-303.48 *Aircraft, Missile and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-303.49 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-303.50 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-303.51 *Reserved.*

7-303.52 *Procurement of Precision Components for Mechanical Time Devices.* In accordance with 1-2207.4, insert the clause in 7-104.46.

7-303.53 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-303.54 *Rights in Data.* In accordance with 7-104.9 insert the appropriate clause, or clauses, therein.

7-303.55 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-303.56 *Contractor's Identification of Changes.* In accordance with 26-802, insert a clause as provided in 7-104.86.

7-303.57 *Cost Schedule Control Systems.* In accordance with 1-331(h) and 3-501(b) Section C (xlv), insert the clause in 7-104.87.

7-303.58 *Engineering Change Proposals (ECP's).* In accordance with 26-205, insert the clause in 7-104.89.

7-303.59 *Change Order Accounting.* In accordance with 26-205, insert the clause in 7-104.90.

(b) Insert the following additional paragraph to the clause in (a) above, in accordance with 23-201.2(d).

(k) Notwithstanding approval of the Contractor's procurement system, the Contractor shall not enter into certain subcontracts or classes of subcontracts set forth elsewhere in this contract without the prior written consent of the Contracting Officer. With respect to subcontracts so identified, the advance notification requirements of paragraph (a) above shall be fully applicable even though the Contractor's procurement system has been approved and those subcontracts are within the scope of the approval.

(c) In contracts with educational institutions, change "(iii)" in paragraph (a) of the clause in (a) above to read:

(iii) provides for the fabrication, purchase, rental, installation, or other acquisition of equipment or of industrial facilities. (1975 OCT)

(d) In accordance with 23-201.4, insert the Equal Opportunity Preaward Clearance of Subcontracts clause in 7-104.22.

7-402.9 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-402.10 *Termination.* In accordance with 8-702 and 8-704, insert the appropriate clause set forth in either 7-203.10 or 7-302.10.

7-402.11 *Disputes.* In accordance with 7-103.12, insert the clause therein.

7-401.12 *Reserved.*

7-402.13 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-402.14 *Convict Labor.* In accordance with 12-201, insert the clause in 7-104.17.

7-402.15 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-402.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-402.17 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-402.18 *Officials Not To Benefit.* In accordance with 7-103.19, insert the clause therein.

7-402.19 *Covenant Against Contingent Fees.* In accordance with 7-103.20, insert the clause therein.

7-402.20 *Authorization and Consent.* In accordance with 9-102, insert the clause in 7-302.21.

7-402.21 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-402.22 *Patent Rights.* In accordance with 9-107, insert the appropriate clause as set forth in 7-302.23.

7-402.23 *Reserved.*

7-402.24 *Military Security Requirements.* Insert the Military Security Requirements clause in accordance with 7-104.12, modified in accordance with 7-204.12. In contracts without fee with educational institutions, add the following paragraphs (e), (f) and (g).

(e) In the event a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any element thereof from an unclassified status to a classified status or from a lower classification to a higher classification, or (2) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with his established policies to continue the performance of work under the contract in compliance with such change in security classification or requirements. If, despite such reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of such change in security classification or requirements, he shall so notify the Contracting Officer in writing.

(f) After receiving such written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, upon the expiration of fifteen (15) days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of such change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in

LIABILITY TO THIRD PERSONS (1960 OCT)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder.

(b) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith. The Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation

(End of clause)

7-402.27 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3, insert the clause in 7-104.20.

7-402.28 *Payment for Overtime Premiums.* In accordance with 12-102, insert the clause in 7-203.27.

7-402.29 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-402.30 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein.

7-402.31 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29(a), insert the clause therein.

7-402.32 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42(a), insert the clause therein.

7-402.33 *Reserved.*

7-402.34 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-402.35 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-402.36 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-402.37 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-403 Clauses To Be Used When Applicable.

7-403.1 *Clauses for Contracts Involving Construction Work.*

(a) In accordance with 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses therein.

7-403.2 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-403.3 *Reporting of Royalties.* In accordance with 9-110 (d), insert the clause in 7-104.8(a).

7-403.4 *Excess Profit.* In accordance with 7-104.11, insert the clause therein.

7-403.5 *Excusable Delays.* In accordance with 8-708, insert the clause in 7-203.11.

7-403.6 *Preference for Certain Domestic Commodities.* In accordance with Section VI, Part 3, insert the clause in 7-104.13.

7-403.7 *Priorities, Allocations, and Allotments.* In accordance with 1-307.2, insert the clause in 7-104.18.

7-403.8 *Communist Areas.* In accordance with 6-403, insert the clause in 7-103.15.

7-403.9 *Negotiated Overhead Rates - Predetermined.*

(a) In accordance with 3-704, insert the following clause.

NEGOTIATED OVERHEAD RATES—PREDETERMINED (1978 AUG)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than three (3) months after the expiration of his fiscal year shall submit to the Contracting Officer with a copy to the cognizant audit activity, a proposed predetermined overhead rate or rates based on the Contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the Armed Services Procurement Regulation, Section XV, Part 3, as in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the effective date of this contract shall be incorporated into the contract schedule. Rates for subsequent periods shall be negotiated and the results set forth in a written overhead rate agreement executed by both parties. Such agreement shall be automatically incorporated into this contract upon execution and shall specify (i) the agreed predetermined overhead rates, (ii) the bases to which the rates apply, (iii) the fiscal year unless the parties agree to a different period for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the Schedule of this contract the parties fail to agree to a predetermined overhead rate or rates it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "*Allowable Cost, Fee, and Payment*" clause of the contract.

(g) Allowable indirect costs for the period until the end of the Contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the Schedule to the bases set forth therein.

(End of clause)

(b) In the case of a facilities contract, change "Part 3" to "Part 5" in paragraph (c) of the clause in (a) above.

7-403.10 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-403.11 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-403.12 *Limitation on Withholding of Payments.*

(a) Except as provided in (b) below the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing

DISPUTES CONCERNING LABOR STANDARDS (1977 DEC)

Disputes arising out of the labor standards provisions of this contract shall be subject to the *Disputes* clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of this contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

(End of clause)

(b) In the case of construction contracts with a State or political subdivision thereof, in accordance with 18-703.3, preface the clauses required by (a) above with the following provision.

The Contractor agrees to comply with the requirements of the Contract Work Hours Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

7-602.24 *Nondomestic Construction Material.*

(a) When a determination has been made that certain construction materials may be used without regard to country of origin, or when the contract is for construction in the Canal Zone, the following clause shall be included in the contract and the excepted items shall be listed therein.

NONDOMESTIC CONSTRUCTION MATERIALS (1966 OCT)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the items set forth below.

[*Insert list here*]

(End of clause)

When the above clause is used, the contracting officer shall place in the contract file a copy of the signed approval; and a copy thereof shall be available for public inspection.

(b) In accordance with 18-508.3 with respect to contracts for construction in the Canal Zone, the following will be inserted in the space following clause in (a) above.

Panamanian Materials. Any construction material or component that is mined, produced, or manufactured in the Republic of Panama (Any such component shall be considered to be a United States component for the purpose of the "Buy American Act" clause. (1969 JUL)

7-602.25 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-602.26 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-602.27 *Federal, State, Local and Foreign Taxes.* In accordance with Section XI, Part 4, insert the appropriate clause set forth in 7-103.10; and in accordance with 11-302, the following clause.

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (1977 JAN)

(a) As used throughout this clause, the term "materials" means building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price type contract as defined in the Armed Services Procurement Regulation, the contract price includes North Carolina State and local sales and use taxes to be paid with respect to materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement type contract as defined in such regulation, any North Carolina State and local sales and use taxes paid by the Contractor with respect to materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below:

(i) The Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, such certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the North Carolina State and local sales and use taxes paid thereon. Such statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid thereon by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes.

(ii) The Contractor shall obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within sixty (60) days after completion. If this contract is not completed before the next October 1, such certified statements shall be submitted on or before the 30th day of November of each year and shall cover taxes paid during the twelve month period which ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period ..... to ....., (name of contractor or subcontractor) paid North Carolina State and local sales and use taxes aggregating $..... (State) and $..... (local) with respect to building materials, supplies, fixtures and equipment which have

become a part of or annexed to a building or structure erected, altered or repaired by (name of contractor) for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid thereon, shown separately, and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid thereon are as set forth in the attachments hereto.

(End of clause)

Note: In ship repair contracts, change paragraph (a) to read as follows:

(a) As used throughout this clause, the term "materials" means materials, supplies, fixtures and equipment which become a part of or are annexed to any vessel altered or repaired under this contract.

7-602.28 *Renegotiation.* In accordance with 7-103.13, insert the clause therein.

7-602.29 *Termination for Convenience of the Government.*

(a) *Contracts Over $10,000.* In accordance with 8-701(a), insert the following clause.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT—CONSTRUCTION (1974 APR)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

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7-602.48 *Reserved.*

7-602.49 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-602.50 *Value Engineering (VE).* Insert the following clause in all fixed-price type construction contracts of $100,000 or more.

VALUE ENGINEERING INCENTIVE (1977 AUG)

(a) *Application.* This clause applies to a Contractor developed and documented Value Engineering Change Proposal (VECP) which:

(i) requires a change to this contract to implement the VECP; and

(ii) reduces the contract price without impairing essential function or characteristics, *provided* that it is not based solely on a change in deliverable end item quantities.

(b) *Documentation.* As a minimum, the following information shall be submitted by the Contractor with each VECP:

(i) a description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each; justification where function or characteristics of a work item is being altered; and the effect of the change on the performance of the end item;

(ii) an analysis and itemization of the requirements of the contract which must be changed if the VECP is accepted and a recommendation as to how to make each such change (*e.g.*, a suggested specification revision);

(iii) a separate detailed cost estimate for both the existing contract requirement and the proposed change to provide an estimate of the reduction in costs, if any, that will result from acceptance of the VECP, taking into account the costs of development and implementation by the Contractor (including any amount attributable to subcontracts in accordance with paragraph (f) below);

(iv) a prediction of any effects the proposed change would have on related costs to the Military Department such as Government furnished property costs, and costs of maintenance and operation;

(v) a statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract completion time or delivery schedule; and

(vi) identification of any previous submission of the VECP, including the dates submitted, the agencies involved, the numbers of the Government contracts involved, and the previous actions by the Government, if known.

(c) *Submission.* To expedite a determination, VECPs shall be submitted to the Resident Engineer at the worksite with a copy to the Contracting Officer. Proposals shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon any proposal submitted pursuant to this clause. If the evaluation period is likely to exceed 45 calendar days, the PCO shall promptly notify the Contractor of the estimated decision date and provide the reasons for the additional time required. The Contractor has the right to withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP.

(d) *Acceptance.* The Contracting Officer may accept, in whole or in part, by contract modification any VECP submitted pursuant to this clause. The Contracting Officer may accept the VECP even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall remain obligated to perform in accordance with this contract. Contract modifications made pursuant to this clause will so state. The decision of the Contracting Officer as to the acceptance of any VECP under this contract shall be final and shall not be subject to the "Disputes" clause of this contract.

(e) *Sharing.* If a VECP submitted by the Contractor pursuant to this clause is accepted, the contract price shall be adjusted without regard to profit in accordance with the following provisions:

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(i) Definition:

(A) Instant contract savings to the Contractor (ICS) are the estimated reduction in the Contractor's cost of performance resulting from the acceptance of the VECP. The proposed cost reduction includes estimated allowable Contractor development and implementation costs (CC). The Contractor's development and implementation costs include any subcontractor development and implementation costs (see (f) below). For purposes of this clause, Contractor development costs are those costs incurred after the Contractor has identified a specific VE project and prior to acceptance and implementation by the Government.

(B) Government Costs (GC) are those DoD costs which directly result from development and implementation of the VECP, such as test and evaluation of the VECP.

(ii) *Calculations and Actions.* Multiply ICS by 45% and GC by 55%. Add these two results, *e.g.*, (.45 ICS plus .55 GC) and subtract from the contract price.

(f) *Subcontracts.* The Contractor shall include appropriate VE arrangements in any subcontract of $50,000 or greater, and may include such arrangements in contracts of lesser value. To compute any adjustment in the contract price under paragraph (e) above, the Contractor's cost of development and implementation of a VECP which is accepted under this contract shall include any development and implementation costs of a subcontractor, which clearly pertains to such VECP, but shall exclude any VE incentive payments which the Contractor may make to a subcontractor. The Contractor may make whatever VE incentive payment arrangements he chooses with his subcontractors, *provided* that any payments to subcontractors under such arrangements are made from the Contractor's, and not the Government's, share of the savings resulting from the VECP.

(g) *Data.* The Contractor may restrict the Government's right to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet:

"This data furnished pursuant to the Value Engineering Incentive clause of contract ..... shall not be disclosed outside the Government, or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations."

In the event of acceptance of a VECP, the Contractor hereby grants to the Government unlimited rights, as defined in the clause of ASPR 7-104.9(a), in the VECP and supporting data, except that, with respect to data which qualifies as and is submitted as limited rights technical data in accordance with the clause of ASPR 7-104.9(a), the Government shall have the rights specified in the contract modification referred to in paragraph (d) hereof and the data shall be appropriately marked.

(End of clause)

7-602.51 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-602.52 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-602.53 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-602.54 *Shop Drawings.*

(a) Insert the following clause, with the appropriate additions in (b) and (c) below.

SHOP DRAWINGS (1976 OCT)

(a) The term "*shop drawings*" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be

under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract; (ii) any claim which the Government may have against the Contractor in connection with this contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of the clause and not otherwise recovered by or credited to the Government.

(i) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(End of clause)

7-605.27 *Convict Labor.* In accordance with 12-203, insert the clause in 7-104.17.

7-605.28 *Officials Not To Benefit.* In accordance with 7-602.19, insert the clause therein.

7-605.29 *Covenant Against Contingent Fees.* In accordance with 7-103.20, insert the clause therein.

7-605.30 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-605.31 *Assignment of Claims.* If the contract is negotiated in contemplation that the contractor may make an assignment, insert the clause in 7-602.8.

7-605.32 *Renegotiation.* In accordance with 7-103.13, insert the clause therein.

7-605.33 *Authorization and Consent.* In accordance with 9-102.1 and 18-902, insert the appropriate clause in 7-103.22 or 7-302.21.

7-605.34 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104 and 18-904, insert the clause in 7-103.23.

7-605.35 *Patent Indemnity.* In accordance with 18-903.3, insert the clause in 7-602.16.

7-605.36 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-605.37 *Competition in Subcontracting.* Insert the clause in 7-104.40.

7-605.38 *Definitions.* In accordance with 7-602.1, insert the clause therein.

7-605.39 *Excusable Delays.* In accordance with 8-708(a), insert the clause in 7-203.11 deleting the words "delivery schedule" in the last sentence and substituting the words "completion time."

7-605.40 *Rights in Shop Drawings.* In accordance with 18-910.1(b), insert the clause in 7-602.47.

7-605.41 *Management Systems' Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-605.42 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-605.43 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-605.44 *Reserved.*

7-605.45 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-605.46 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-605.47 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-605.48 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-606 Clauses To Be Used When Applicable for Cost-Reimbursement Type Construction Contracts.

7-606.1 *Incentive Fee Clause for Cost-Type Construction Contracts.* Cost type construction contracts may provide for incentive fee adjustment in accordance with 3-405.4. Incentive fee cost reimbursement construction contracts will be prepared by using the cost-plus-a-fixed-fee construction contract format set forth in 16-402.3, including the clauses in 7-605 and 7-606, modified in the following particulars:

(i) change the title of the format to read "Cost-Plus-Incentive-Fee Construction Contract;"

(ii) delete the clause entitled "Allowable Cost, Fixed Fee and Payment;"

(iii) insert the clause in 7-203.4(b) entitled "Allowable Cost, Incentive Fee and Payment" with the following changes:

(A) Delete paragraph (a)(1) and substitute:

For the performance of this contract, the Government shall pay to the Contractor—

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Section XV, Part 4, of the Armed Services Procurement Regulation as in effect on the date of this contract, and

(B) The terms of this contract; and

(ii) A fee in the amount of ..... dollars ($ .....) adjusted as provided in (i) below.

in the contract, or he may adjust such estimated construction contract price When bids or proposals are not solicited or where they are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate will be used in lieu of bids or proposals to determine compliance with the funding limitation

(End of clause)

(b) Whenever the clause set forth in (a) above is included in a contract, the following statement shall be inserted in the description of the work to be performed by the Architect-Engineer.

The estimated construction contract price for the project described herein is $. .....

The figure to be inserted in this statement is to be established at the beginning of contract negotiations by agreement between the Architect-Engineer and the Government. Such estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the figure to be inserted, the Contracting Officer should make available to the Architect-Engineer the information upon which the Government has based its initial estimate and any subsequently acquired information which may affect the construction cost.

7-608.4 *Reserved.*

7-608.5 *Option for Supervision and Inspection Services.* The following clause may be included in any fixed-price architect-engineer contract if supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

OPTION FOR SUPERVISION AND INSPECTION SERVICES (1972 APR)

At any time prior to six (6) months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Architect-Engineer to perform any part or all of the supervision and inspection services provided under Appendix A Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services

(End of clause)

7-608.6 *Requirements for Registration of Designers.* The following clause shall be inserted in fixed-price architect-engineer contracts, except that it may be omitted from any contract (1) when the design is to be performed outside the United States, its possessions, or Puerto Rico, or (2) when the design is to be performed in a State or possession which does not have registration requirements for the particular field involved:

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (1972 APR)

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia

(End of clause)

7-608.7 *Accident Prevention.* Insert the clause in 7-602.42, except in contracts where no field work is involved, substituting "Architect-Engineer" for "Contractor."

7-608.8 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.9 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29(a), insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.10 *Subcontractor Cost or Pricing Data.* In accordance with 7-104.42(a), insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.11 *Identification of Expenditures in the United States.* In accordance with Section VI, Part 8, insert the clause in 7-104.58, substituting "Architect-Engineer" for "Contractor."

7-608.12 *Authorization and Consent.* In accordance with 18-902.1 and 18-902.2, insert the appropriate clause in 7-103.22 or 7-302.21, substituting "Architect-Engineer" for "Contractor."

7-608.13 *Notice and Approval of Restricted Designs.* In accordance with 18-905, insert the following clause.

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (1972 APR)

In the performance of this contract, the Architect-Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer the Architect-Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Architect-Engineer to be available only from a sole source As to any such design or specification the Architect-Engineer shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design or specification.

(End of clause)

7-608.14 *Patent Rights.* In accordance with 9-107 and 18-908(a), insert the appropriate clause in 7-302.23, substituting "Architect-Engineer" for "Contractor."

7-608.15 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6 in every classified contract which covers or is likely to cover classified subject matter, substituting "Architect-Engineer" for "Contractor."

7-608.16 *Alterations.* In accordance with 7-604.1, insert the clause therein.

7-608.17 *Rights in Data.* In accordance with 18-910.2 and 18-910.3, insert the appropriate clause, or clauses, in 7-104.9, substituting "Architect-Engineer" for "Contractor."

7-608.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83, substituting "Architect-Engineer" for "Contractor."

7-608.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-608.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-608.21 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-608.22 *Reserved.*

7-608.23 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

(B) the retention or storage of the affected Facilities, *provided*, that the Contracting Officer will not direct the Contractor to retain or store any items of Facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) the restoration of Government-owned land or buildings incident to the removal therefrom of Government-owned Facilities; and

(D) the sale of any affected Facilities in such manner, at such times, and at such price or prices, as may be approved by the Contracting Officer, except that the Contractor shall not be required to extend credit to any purchaser.

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed ninety (90) day period, or within thirty (30) days after notice as hereinafter provided, the Contractor may, upon not less than thirty (30) days' written notice to the Government and at Government risk and expense, (i) retain the Facilities in place or (ii) remove any of the affected severable Facilities located in Contractor-owned buildings or property and store them elsewhere, at Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification, if any. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (c) above.

(e) Nonseverable items of the Facilities or items of the Facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(f) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any Facilities with respect to which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (e) above.

(g) The Contractor shall, within a reasonable time after the expiration of the ninety (90) day period specified in paragraph (c) above, remove all property owned by him from land or buildings owned or acquired by the Government and take such action as the Contracting Officer may direct in writing with respect to restoring such land or buildings, insofar as they are affected by the installation therein of the Contractor's property, to their condition prior to such installation.

(h) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at Contractor's plant, except for restoration or rehabilitation costs caused by removal of the Facilities pursuant to paragraph (c)(ii) above. The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any such damage as may be occasioned by the negligence of the Government, its agents, or independent contractors.

(End of clause)

7-702.27 *Failure to Perform.*

FAILURE TO PERFORM (1964 SEP)

(a) Subject to the provisions of the clause hereof entitled "Excusable Delays", if the Contractor shall fail to perform this contract in accordance with its terms, the Contracting Officer shall give the Contractor written notice thereof. Thereafter, notwithstanding any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related procurement contract, to the extent that such equitable adjustment arises out of the Contractor's failure to perform or such reasonable remedial action as may be taken by the Contracting Officer predicated upon such failure.

(b) The failure of the Government to insist, in any one or more instances, upon the performance of any term or terms of this contract shall not be construed as a waiver or relinquishment of the Government's right to future performance of such term or terms, and the Contractor's obligation in respect to such future performance shall continue in full force and effect.

(c) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

7-702.28 *Disputes.* Insert the clause in 7-103.12.

7-702.29 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, deleting paragraphs (c) and (d), and substituting the following paragraphs (c) and (d).

(c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost, to the extent appropriate, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause in this contract.

(d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding (c) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into may contain, in lieu of paragraph (c) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. (1973 APR)

7-702.30 *Authorizaton and Consent.* In accordance with 9-102, insert the clause in 7-103.22 or 7-302.21.

7-702.31 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-702.32 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-702.33 *Subcontracts.* Insert the clause in 7-203.8 except that paragraph (a) shall be appropriately modified to delete references to facilities and special tooling.

7-702.34 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-702.35 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3(a), insert the clause in 7-104.20(a).

7-702.36 *Buy American Act.* In accordance with 7-104.3, insert the clause therein. When the contract involves construction work, in accordance with 7-602.20 and 7-602.24 also insert the clauses therein.

7-702.37 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-702.38 *Renegotiation.* In accordance with 7-103.13, insert the appropriate clause therein.

7-702.39 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-702.40 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-702.41 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-702.42 *Payment for Overtime Premiums.* In accordance with 12-102.4, insert the clause in 7-203.27.

7-702.43 *Convict Labor.* In accordance with 12-202 and 12-203, insert the clause in 7-104.17.

7-702.44 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

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7-702.45 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-702.46 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-702.47 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-702.48 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein as amended by 7-104.41(b).

7-702.49 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-702.50 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-702.51 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-702.52 *Reserved.*

7-702.53 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-702.54 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-702.55 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-702.56 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-703 Required Clauses for Facilities Acquisition Contracts. The following contract clauses shall be inserted in all facilities acquisition contracts.

7-703.1 *Definitions.* Insert the clause required by 7-702.1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this Regulation.

7-703.2 *Facilities To Be Provided.* Insert the clause in 7-702.2.

7-703.3 *Late Delivery, Diversion, and Substitution.* Insert the clause in 7-702.3.

7-703.4 *Changes.* Insert the clause in 7-702.4.

7-703.5 *Representations and Warranties.* Insert the clause in 7-702.5.

7-703.6 *Inspection.* In accordance with 8-708, insert the clause in 7-702.6.

7-703.7 *Excusable Delays.* Insert the clause in 7-203.11, changing "Termination" in the last sentence to "Termination of Work."

7-703.8 *Government Bills of Lading.* Insert the clause in 7-702.9.

7-703.9 *Allowable Cost and Payment.*

(a) In accordance with 7-702.10, insert the clause therein.

(b) If desired, the following additional provision may be added after the first sentence of paragraph (j) of this clause.

After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of such total estimated cost, or one hundred thousand dollars ($100,000) whichever is less, shall have been set aside.

(c) If desired, the following additional paragraph may be added to this clause as paragraph (L), in which case paragraphs (L), and (m) of the clause in 7-702.10 shall be redesignated paragraphs (m) and (n).

(L) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all relevant provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (m) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of (i) all work under this contract, or (ii) such work involving acquisition, construction, or installation of the Facilities as may then be specified in the Schedule, but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

7-703.10 *Limitation of Cost.* Insert the clause in 7-702.11.

7-703.11 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-703.12 *Title.* Insert the clause in 7-702.15, except that the third sentence of paragraph (a) shall be deleted.

7-703.13 *Access.* Insert the clause in 7-702.16.

7-703.14 *Liability for the Facilities.* Insert the clause in 7-702.18, except that the phrase "in accordance with the clause of the contract entitled 'Maintenance'," in paragraph (a)(ii) shall be deleted, and the phrase "in accordance with sound industrial practice" inserted in lieu thereof.

7-703.15 *Insurance—Liability to Third Persons.* In accordance with 7-702.19, insert the clause in 7-203.22, except as otherwise provided in 7-402.26 when the contractor claims partial or total immunity from tort liability as a state agency or as a charitable institution.

7-703.16 *Indemnification of the Government.* Insert the clause in 7-702.20.

7-703.17 *Stop Work Orders.* Insert the clause in 7-702.21.

7-703.18 *Termination of Work.* In accordance with 7-702.22, insert the contract clause therein.

7-703.19 *Failure To Perform.* Insert the clause in 7-702.27.

7-703.20 *Disputes.* Insert the appropriate clause in 7-103.12.

7-703.21 *Military Security Requirements.* In accordance with 7-702.29, insert the clause called for therein.

7-703.22 *Authorization and Consent.* In accordance with 9-102, insert the clause in 7-103.22 or 7-302.21.

7-703.23 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-703.24 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-703.25 *Subcontracts.* Insert the clause in 7-203.8, except that paragraph (a) shall be appropriately modified to delete references to facilities and special tooling.

7-703.26 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-703.27 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3(a), insert the clause in 7-104.20(a).

7-703.28 *Buy American Act.* In accordance with 7-104.3, insert the clause therein. When the contract involves construction work, in accordance with 7-602.20 and 7-602.24 also insert the clauses therein.

7-703.29 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-703.30 *Renegotiation.* In accordance with 7-103.13, insert the appropriate clause therein.

7-703.31 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-703.32 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-703.33 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-703.34 *Payment for Overtime Premiums.* In accordance with 12-102.4, insert the clause in 7-203.27.

7-703.35 *Convict Labor.* In accordance with 12-202, insert the clause in 7-104.17.

7-703.36 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-703.37 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-703.38 *Contract Work Hours and Safety Standards Act — Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-703.39 *Supersedure.*

SUPERSEDURE (1964 SEP)

When the acquisition, construction, or installation of the Facilities called for by this contract, or any useable increment thereof, is completed and accepted by the Government, such facilities shall thereafter be subject to the provisions of the related facilities contract by which the use of such items by the Contractor is authorized.

(End of clause)

7-703.40 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-703.41 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein as amended by 7-104.41(b).

7-703.42 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-703.43 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-703.44 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause.

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-703.45 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-703.46 *Reserved.*

7-703.47 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-703.48 *Property Control.* Insert the clause in 7-702.17.

7-703.49 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-703.50 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-703.51 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-704 Required Clauses for Facilities Use Contracts. The following clauses shall be inserted in all facilities use contracts except that the clauses in 7-706 may be used in facilities use contracts with nonprofit educational institutions.

7-704.1 *Definitions.* Insert the clause required by 7-702.1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this Regulation.

7-704.2 *Use and Charges.* Insert the clause in 7-702.12.

7-704.3 *Allowable Cost and Payment.*

ALLOWABLE COST AND PAYMENT (1965 JUL)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract, which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Section XV, Part 5, of the Armed Services Procurement Regulation as in effect on the date of this contract; and (ii) the terms of this contract.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

(End of clause)

7-704.4 *Limitation of Cost.* Insert the clause in 7-702.11.

7-704.5 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-704.6 *Location of the Facilities.* Insert the clause in 7-702.8.

7-704.7 *Maintenance.* Insert the clause in 7-702.14.

7-704.8 *Inspection.* Insert the clause in 7-702.6.

7-704.9 *Title.* Insert the clause in 7-702.15, except that the following paragraph (a) shall be substituted for the corresponding paragraph in that clause:

(a) Title to the Facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities.

7-704.10 *Access.* Insert the clause in 7-702.16.

7-704.11 *Property Control.* Insert the clause in 7-702.17.

7-704.12 *Representations and Warranties.* Insert the clause in 7-702.5.

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7-704.13 *Government Bills of Lading.* Insert the clause in 7-702.9.

7-704.14 *Liability for the Facilities.* Insert the clause in 7-702.18.

7-704.15 *Indemnification of the Government.* Insert the clause in 7-702.20, deleting the phrase "Except as provided in the 'Insurance— Liability to Third Persons' clause" in the first sentence.

7-704.16 *Notice of Use of the Facilities.* Insert the clause in 7-702.23.

7-704.17 *Termination of the Use of the Facilities.* Insert the clause in 7-702.24.

7-704.18 *Period of This Contract.* Insert the clause in 7-702.25.

7-704.19 *Disposition of the Facilities.* Insert the clause in 7-702.26.

7-704.20 *Failure To Perform.* Insert the clause in 7-702.27, except that the phrase "Subject to the provisions of the clause hereof entitled 'Excusable Delays'," shall be deleted in paragraph (a).

7-704.21 *Disputes.* Insert the clause in 7-103.12.

7-704.22 *Military Security Requirements.* In accordance with 7-702.29, insert the clause called for therein except that "ASPR 7-702.4" shall be substituted for "this contract" in the second sentence of paragraph (c).

7-704.23 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-704.24 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-704.25 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-704.26 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-704.27 *Payment for Overtime Premiums.* In accordance with 12-102.4, insert the clause in 7-203.27.

7-704.28 *Convict Labor.* In accordance with 12-202 and 12-203, insert the clause in 7-104.17.

7-704.29 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-704.30 *Contract Work Hours and Safety Standards Act — Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-704.31 *Supersedure.*

SUPERSEDURE (1964 SEP)

(a) Facilities heretofore provided to the Contractor pursuant to the contracts specified in the Schedule shall become subject to the terms of this contract upon its effective date. The terms of the contracts by which such Facilities may have been provided to the Contractor are hereby superseded with respect to such Facilities, except for rights and obligations which may have accrued under such other contract prior to the effective date hereof.

(b) Each item of Facilities hereafter provided to the Contractor under any contract which so specifies shall become subject to the terms of this contract upon the completion of its construction, acquisition, and installation, or upon its availability for use, whichever first occurs, except as otherwise provided in the contract or other document by which such Facilities are provided to the Contractor.

(End of clause)

7-704.32 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-704.33 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein as amended by 7-104.41(b).

7-704.34 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-704.35 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-704.36 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-704.37 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-704.38 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-704.39 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-704.40 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-704.41 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-705 Clauses To Be Used When Applicable.

7-705.1 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein. Particular attention shall be given to obtaining data when data are necessary to the use or disposal of facilities.

7-705.2 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-705.3 *Priorities, Allocations, and Allotments.* In accordance with 1-307.2, insert the clause in 7-104.18.

7-705.4 *Transfer of Title to the Facilities.* In accordance with 4-116.4, the following clause may be inserted in facilities contracts.

TRANSFER OF TITLE TO THE FACILITIES (1964 SEP)

Notwithstanding the provisions of the clause of this contract entitled "Title", the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon; *provided*, that the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this clause. Upon the transfer of title to equipment under this clause, such equipment shall cease to be Government property.

(End of clause)

7-705.5 *Labor Standards for Construction Work.* Except as provided in 18-703.2 and 18-703.3, insert the clauses in 7-602.23(a) if the contract involves construction as described in 12-106.1 and 18-701. If such construction work may be required but it is not certain, insert the following clause. (See 18-704.2(l) with regard to the Contracting Officer's responsibility for obtaining wage determinations.)

LABOR STANDARDS FOR CONSTRUCTION WORK (1977 DEC)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses:

(i) "Davis-Bacon Act (40 U.S.C. 276a to a7)," 7-602.23(a)(i);

(ii) "Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333)," 7-602.23(a)(ii);

(i) credits to, or adjustment of the prices of, the related contracts, subcontracts, or purchase orders benefiting from the use of the modernized or replacement equipment; or

(ii) payment to the Government through the Contracting Officer having cognizance of the Government production and research property; or

(iii) such other means as may be mutually agreed to.

(End of clause)

7-705.23 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-705.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-705.25 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-705.26 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-705.27 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-705.28 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-705.29 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-705.30 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-705.31 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-705.32 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-705.33 *Reserved.*

7-705.34 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-705.35 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

Part 8—Letter Contracts

7-801 Applicability. This Part sets forth uniform contract clauses for use in letter contracts as defined in 3-408(a).

7-802 Required Clauses. The following clauses shall be inserted in all letter contracts.

7-802.1 *General.* Letter contracts shall include all clauses which statute, executive order, or this Regulation require to be included in the type of definitive contract contemplated by the letter contract. The letter contract also shall include such additional clauses as are known to be appropriate for the definitive contract which is contemplated.

7-802.2 *Execution, Commencement of Work, and Priority Rating.* (This clause may be omitted when Standard Form 26 is used to award the letter contract.)

EXECUTION, COMMENCEMENT OF WORK, AND PRIORITY RATING (1964 MAR)

The Contractor's acceptance of this order will be indicated by affixing its signature to three copies thereof and returning the executed copies to the Contracting Officer not later than ..... Upon acceptance by both parties, the Contractor shall proceed with performance of the work described herein, including procurement of necessary materials. An appropriate priority rating, in accordance with the Department of Defense Priorities and Allocation Manual, will be assigned to this letter contract

(End of clause)

7-802.3 *Limitation of Government Liability.*

LIMITATION OF GOVERNMENT LIABILITY (1967 OCT)

(a) The Contractor is not authorized to make expenditures or to incur obligations, in performance of this contract, which exceed ..... dollars ($.....).

(b) The maximum amount for which the Government shall be liable if this contract is terminated is ..... dollars ($.....).

(End of clause)

7-802.4 *Payments Clauses for Letter Contracts.*

(a) *Cost Type.* Insert the following clause in all letter contracts contemplating a cost-type contract except letter contracts for conversion, alteration or repair of ships.

PAYMENTS OF ALLOWABLE COSTS PRIOR TO DEFINITIZATION OF CONTRACT (1972 MAY)

(a) Pending the placing of the definitive contract referred to herein, the Government shall currently reimburse the Contractor for all allowable expenditures made hereunder at the following rates:

(i) One hundred percent (100%) of approved costs representing progress payments to Subcontractors under fixed-price type subcontracts, *provided*, that payment by the Government to the Contractor shall not exceed eighty percent (80%) of the costs of such Subcontractors subject to the definition of costs contained in (c) below.

(ii) One hundred percent (100%) of approved costs representing cost-reimbursement type subcontracts, *provided*, that payments by the Government shall not exceed eighty-five percent (85%) of the costs of such Subcontractors subject to the definition of costs contained in (c) below; and

(iii) eighty-five percent (85%) of all other approved costs subject to the definition of costs contained in (c) below

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(b) For the purpose of determining the amounts payable to the Contractor hereunder, allowable items of cost shall be determined by the Contracting Officer in accordance with the statement of cost principles set forth in Part ..... of Section XV of the Armed Services Procurement Regulation. In no event shall the total reimbursement made under this paragraph exceed eighty-five percent (85%) of the maximum amount of the Government's liability otherwise set forth in this letter contract.

(c) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost. Costs shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocated and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to Contractor's subcontractors under similar cost standards. The requirement of prior payment for items or services purchased directly for the contract shall not apply where the Contractor is a small business concern.

(d) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (e) below, make payment thereon as approved by the Contracting Officer.

(e) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(End of clause)

(b) *Fixed Price Type.* When, in accordance with Appendix E, Part 5 (see E-503 and E-505), payments are to be made under letter contracts contemplating a fixed-price-type contract, insert the clause set forth in 7-104.35(a) (see E-515 and E-510) unless the contract is for construction. The clause may be supplemented as provided in E-511.6 and E-516. In construction contracts, insert the clause set forth in (a) above, supplemented by appropriate title, risk of loss and other provisions.

7-802.5 *Definitization.*

(a) When it is known at the time of entering into the letter contract that the price of the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 3-807.3, paragraph (a) of the following clause may be appropriately modified to eliminate the requirement for cost or pricing data. The definitization schedule in paragraph (b) shall include (i) dates for submission of a make-or-buy plan, contractor's price, small business and small disadvantaged business subcontracting plan, if required, and other proposals; (ii) a date for commencement of negotiation of price and other terms and conditions; and (iii) a target date for definitization. The target date shall be the earliest practicable date for definitization.

ticable at all times (including the period of performance) and places, and in any event prior to acceptance. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of services performed and materials furnished under this contract shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after acceptance of the services or materials last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any services or materials which at the time of delivery thereof failed to comply with the requirement of this contract. Except as otherwise provided in paragraph (c) hereof, below, the allowability of the cost of any such replacement or correction shall be determined as provided in the "Payments" clause of this contract, but the "hourly rate" for labor hours incurred in such replacement or correction shall be reduced so as to exclude the portion of such rate attributable to profit. Corrected or replacement materials and services shall not be tendered again for acceptance unless the former tender and the requirement of correction or replacement is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, and if such replacement or correction may be performed within the ceiling price, or the ceiling price as increased by the Government, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, and may deduct such increased cost from any amounts due the Contractor under this contract (or require repayment of any payments theretofore made), or (ii) may terminate this contract for default as provided in the "Termination" clause of this contract. Failure to agree to the amount of any such increased cost to be charged to the Contractor, or to such reduction in, or repayment of, any amount due under this contract, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; (iii) a separate and complete major industrial operation in connection with the performance of this contract; or (iv) all or substantially all of the Contractor's operations under this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory person has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of this clause shall apply to any corrected or replacement services or materials.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, and the work and services hereunder. Records of all inspection work by the Contractor shall be complete and available to the Government at all reasonable times during performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace materials furnished and services performed under this contract which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the "Government Property" clause of this contract.

(End of clause)

In cases where inspection and acceptance are desired at the contractor's plant, the following may be inserted in place of the last sentence of paragraph (a):

Acceptance by the Government of all the items (other than aircraft to be flown away, if any) to be furnished under this contract shall be at the plant or plants of the Contractor specified in the Schedule, or any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the inspector or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time such inspection and test are requested by the Contractor.

7-901.22 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-901.23 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-901.24 *Renegotiation.* In accordance with the requirements of 7-103.13, insert the appropriate contract clause therein.

7-901.25 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause.

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-901.26 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-901.27 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-901.28 *Reserved.*

7-901.29 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-901.30 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-901.31 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-902 Clauses To Be Used When Applicable.

7-902.1 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-902.2 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805, insert the clause in 7-104.20, as appropriate.

7-902.3 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, deleting paragraph (c) and substituting the following:

and charge to the Contractor any cost occasioned to the Government that is directly related to the performance of such services; or (ii) terminate this contract for default as provided in the clause of this contract entitled "Default."

(c) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services to be performed hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the term of this contract and for such longer period as may be specified elsewhere in this contract.

(End of clause)

7-1902.5 *Payments.* In accordance with 7-103.7, insert the clause therein.

7-1902.6 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-1902.7 *Federal, State, Local and Foreign Taxes.* In accordance with 7-103.10, insert the appropriate clause therein.

7-1902.8 *Default.* In accordance with 7-103.11, insert the clause therein.

7-1902.9 *Disputes.* In accordance with 7-103.12, insert the appropriate clause therein.

7-1902.10 *Reserved.*

7-1902.11 *Discounts.*

DISCOUNTS (1971 NOV)

In connection with any discount offered, time will be computed from the date of completion of performance of the services or from the date correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of completion of performance. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

(End of clause)

When SF 33A is used, the above clause will be substituted for subparagraph (b) of clause 9, *Discounts* (see 16-101.1(ii)).

7-1902.12 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-1902.13 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-1902.14 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-1902.15 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-1902.16 *Termination for Convenience of the Government.*

(a) Except in stevedoring contracts and except as provided in (b) below, insert the appropriate clause in 7-103.21.

(b) If it has been reasonably determined that termination for convenience would not result in a claim for anything but the services rendered, the following clause may be used, regardless of contract amount, in lieu of any other termination for convenience clause. See 8-705.1(b).

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1968 FEB)

The Contracting Officer, by written notice may terminate this contract, in whole or in part, when it is in the best interests of the Government. If this contract is so terminated, the Govern-

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ment shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

(End of clause)

7-1902.17 *Authorization and Consent.* Except in contracts for stevedoring services and in accordance with 7-103.22, insert the clause therein.

7-1902.18 *Notice and Assistance Regarding Patent and Copyright Infringement.* Except in contracts for stevedoring services and in accordance with 7-103.23, insert the clause therein.

7-1902.19 *Reserved.*

7-1902.20 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-1902.21 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-1902.22 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-1902.23 *Time of Delivery.* Insert a delivery clause in accordance with 7-104.92.

7-1902.24 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-1902.25 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-1903 Clauses To Be Used When Applicable in Fixed-Price Service Contracts.

7-1903.1 *Clauses for Fixed-Price Service Contracts Involving Construction Work.*

(a) In accordance with 12-106 and 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses therein in addition to the clause in 7-104.3.

7-1903.2 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the appropriate clause(s) in 7-104.2.

7-1903.3 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-1903.4 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-1903.5 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-1903.6 *Additional Bond Security.* If the contract will require the contractor to furnish a bond in connection therewith, insert the clause in 7-103.9.

7-1903.7 *Reporting and Refund of Royalties.* In accordance with 7-104.8, insert the appropriate clause or clauses therein.

7-1903.8 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1903.9 *Ground and Flight Risk.* In accordance with 10-404, insert the clause in 7-104.10.

7-1903.10 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein.

7-1903.11 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-2003.30 *Bid Samples.*

(a) In accordance with 2-202.4(e), insert the following provision.

BID SAMPLES (1974 APR)

(a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this Invitation for Bids, must be furnished as a part of the bid and must be received before the time set for opening bids. Samples will be tested or evaluated to determine compliance with all characteristics listed for such test or evaluation in this Invitation for Bids.

(b) Failure of samples to conform to all such characteristics will require rejection of the bid. Failure to furnish samples by the time specified in the Invitation for Bids will require rejection of the bid, except that a late sample transmitted by mail may be considered under the provision for considering late bids, as set forth elsewhere in this Invitation for Bids.

(c) Products delivered under any resulting contract shall conform to the approved sample as to the characteristics listed for test or evaluation and shall conform to the specifications as to all other characteristics.

(End of provision)

(b) When bid samples are to be waived in accordance with 2-202.4(f), insert the following provision.

WAIVER OF BID SAMPLES (1974 APR)

The requirement for furnishing samples may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has offered to the purchasing office on a previous procurement and (ii) the Contracting Officer determines that such product was previously procured or tested by the purchasing office and found to comply with specification requirements conforming in every material respect to those in this Invitation for Bids.

(End of provision)

The contracting officer may designate in lieu of purchasing office, an alternate activity or office. When considered necessary because of the nature of the products, the provision above may be limited to provide for waiving the requirement only if the product offered is produced at the same plant at which the product previously procured or tested was produced.

7-2003.31 *Requirement for Descriptive Literature.*

(a) In accordance with 2-202.5(d)(2), insert the following provision.

REQUIREMENT FOR DESCRIPTIVE LITERATURE

(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to (*).

(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids.

(End of provision)

(See footnotes on following page)

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*The contracting officer shall insert significant elements such as design, materials, components, or performance characteristics, or methods of manufacture, construction, assembly, or operation, as appropriate

(b) When requirements for descriptive literature are to be waived in accordance with 2-202.5(e), the provision in (a) above shall be modified by adding the following at the end of the clause paragraph (b):

The requirements for furnishing descriptive literature may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to the purchasing office under a prior contract and the bidder identifies the contract, and (ii) the Contracting Officer determines that such product meets the requirements of this Invitation for Bids. (1974 APR)

The contracting officer may designate in lieu of purchasing office, an alternate activity or office. A bidder may submit his bid either on the basis of the descriptive literature to be furnished or on the basis of a previously procured product. If he elects to submit his bid on one basis, he is precluded from having his bid considered on the alternative basis after bids are opened.

7-2003.32 *Notice of Small Business-Small Purchase Set-Aside.* In accordance with 1-702(c), insert the following clause.

NOTICE OF SMALL BUSINESS-SMALL PURCHASE SET-ASIDE (1980 AUG)

Quotes under this acquisition are solicited from small business concerns only, and this acquisition is to be made only from a small business concern. This action is based on Section 221(j) of Public Law 95-507. Quotes received from firms that are not small business concerns shall not be considered and shall be rejected.

(End of clause)

7-2003.33 *Reserved.*

7-2003.34 *Reserved.*

7-2003.35 *Discounts.* In accordance with 2-407.3(a), insert the following clause.

DISCOUNTS (1968 SEP)

In accordance with subparagraph (a) of the clause entitled "Discounts" in the Solicitation Instructions and Conditions (Standard Form 33-A), prompt payment discounts will be considered in the evaluation of bids, *provided* the minimum period for the offered discounts is:

* (i) ..... days from date of delivery of the supplies to carrier when acceptance is at point of origin; or

* (ii) ..... days where delivery and acceptance are at destination.

The offered discount of a successful Bidder will form a part of the award whether or not such discount was considered in the evaluation of his bid and such discount will be taken if payment is made within the discount period.

(End of clause)

*The Contracting Officer shall delete (i) or (ii) from the clause, whichever is inapplicable, when "origin only" or "destination only" delivery acceptance is solicited

7-2003.36 *Multiple Technical Proposals.* In accordance with 2-503.1(a)(x), insert the following clause.

MULTIPLE TECHNICAL PROPOSALS (1974 APR)

In the first step of this two-step procurement, offerors are authorized and encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the offeror will be notified as to its acceptability.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

INDUSTRIAL PREPAREDNESS PRODUCTION PLANNING (1974 APR)

This solicitation includes an item for industrial planning in support of the Industrial Preparedness Production Planning program. Bidders are cautioned to carefully review Section E of the Schedule and the attached Industrial Preparedness Production Planning Exhibit or Attachment. Failure to bid on the Industrial Preparedness Production Planning line item set forth in the Schedule may result in rejection of the bid.

(End of provision)

7-2003.70 *Evaluation of Transportation Costs.* In accordance with 19-208.4(b), insert the following provision.

EVALUATION OF TRANSPORTATION COSTS (1974 APR)

Costs of transporting supplies to be delivered under this contract will not be an evaluation factor for award.

(End of provision)

7-2003.71 *Clean Air and Water Certification.* In accordance with 1-2302.1, insert the following provision.

CLEAN AIR AND WATER CERTIFICATION (1977 JUN)

Applicable if the bid or offer exceeds $100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.

The bidder or offeror certifies as follows:

(i) any facility to be utilized in the performance of this proposed contract is—( ), (is not—( ), listed on the Environmental Protection Agency List of Violating Facilities;

(ii) he will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(iii) he will include substantially this solicitation certification, including this paragraph (iii), in every nonexempt subcontract.

(End of provision)

7-2003.72 *Privacy Act Notification.* In accordance with 1-327, the following notification shall be included in every solicitation and resulting contract, and in each contract awarded without a solicitation, where the statement of work requires the design, development, or operation of a system of records on individuals for an agency function:

PRIVACY ACT NOTIFICATION (1975 NOV)

This procurement action requires the Contractor to do one or more of the following: design, develop, or operate a system of records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974, Public Law 93-579, December 31, 1974, (5 U.S.C. 552a) and applicable agency regulations. Violations of the Act may involve the imposition of criminal penalties.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-2003.73 *Solicitation Provision for Dismantling, Demolition or Removal of Improvements.* In accordance with 4-503, insert the following provision for solicitations for dismantling, demolition or removal of improvements.

BONDS OR OTHER SECURITY (1977 APR)

A bid guarantee in the penal sum of $..... must accompany the bid. Within ten (10) days after receipt of a notice of award, the Contractor shall furnish a performance bond (Standard Form 25) in the penal sum of $..... and payment, in full, of any sum due the Government. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds will be accepted. Individual sureties will be accepted if each such surety deposits with the Contracting Officer cash, bonds, or notes of the United States, or certified check drawn to the order of the office designated for contract administration, or such other security as the Contracting Officer may deem necessary, for the required amount of the guaranty, under the agreement that the collateral so deposited shall remain in the possession and control of the Treasurer of the United States until the completion of the contract. The formal contract and notice to proceed will be issued on receipt of an acceptable performance bond and payment of any sum due the Government.

(End of provision)

7-2003.74 *Small Disadvantaged Business Concern.* Include the following representation in accordance with 1-707.3(f).

SMALL DISADVANTAGED BUSINESS CONCERN (1980 AUG)

(a) The offeror represents that he ( ) is, ( ) is not, a small business concern owned and controlled by socially and economically disadvantaged individuals. The term "small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern—

(1) that is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more such individuals.

(b) The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e. American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (i.e. U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(End)

[FR Doc. 80-38053 Filed 12-9-80; 8:45 am]

BILLING CODE 3810-70-C